3-426

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 48.

PLINEY JEWELL ET AL., APPELLANTS,

vs.

JOHN KNIGHT, ELIZA J. KNIGHT, STOUGHTON A. FLETCHER AND FRANCIS M. CHURCHMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED SEPTEMBER 27, 1884.

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1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-three, before the Honorable Thomas Drummond, judge of the seventh judicial circuit, and the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

PLINY JEWELL, CHARLES A. JEWELL, MARSHAL Jewell, Lyman B. Jewell, Charles H. Spang, John W. Chalfant, Campbell B. Herron, George A. Chalfant	7188. Chancery.
vs.	
JOHN KNIGHT, ELIZA J. KNIGHT, STOUGHTON A. Fletcher, and Francis M. Churchman.	

Be it remembered that heretofore, to wit, at the May term of said court, on the 9th day of May, A. D. 1881, before Honorable Walter Q. Gresham, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their bill of complaint herein in the words following, to wit:

2 Your orators, Pliny Jewell, Charles A. Jewell, Marshall Jewell, and Lyman B. Jewell, who are citizens of the State of Connecticut and partners in business under the firm name of P. Jewell & Sons, at the city of Hartford, in said State, and Charles H. Spang, John W. Chalfant, Campbell B. Herron, and George A. Chalfant, who are citizens of the State of Pennsylvania and partners in business under the firm name of Spang, Chalfant & Co., in the city of Pittsburgh, in said last-named State, complain of John Knight, Eliza J. Knight, his wife, Stoughton A. Fletcher, and Francis M. Churchman, who are citizens of the State of Indiana, and say—

That said John Knight, on the 27th day of December, 1878, and on the 1st day of May, 1879, and continuously between these dates, was, and for a long time prior thereto had been, in business in his own name in the city of Indianapolis, in the purchase, manufacture, and sale of machinery and machine supplies, having good standing and credit with your orators and among merchants, and making frequent purchases on credit in the cities of Hartford, Pittsburgh, and many other places from your orators and others.

That said firm of Spang, Chalfant & Co., relying upon said John Knight's good reputation and credit, sold to him, on the 27th day of December, 1878, goods, wares, and merchandise for the sum of $75 on a credit of — days, and on the 7th day of April, 1879, other goods and merchandise for the sum of $— on a credit of — days.

That neither of said sums have been paid in whole or in part; that on the 3d day of May, 1881, said Spang, Chalfant & Co. obtained judgment on the law side of this honorable court, in cause No. 7159, against said Knight on said sales for the sum of $1,032.50;

that on the 4th day of May, 1881, an execution was duly issued on said judgment by the clerk to the marshal of this court, who, on the 4th day of May, 1881, made return thereon of "*nulla bona.*"

That on the 14th day of April, 1879, said Knight accepted a draft drawn on him by said firm of P. Jewell & Sons, dated February 2, 1879, and payable six months after date, for the sum of $379.36, the value of certain goods and merchandise theretofore sold by them to him; that said draft was duly presented for payment at maturity, payment refused, and the draft protested.

That on the — day of ——, 1879, said Knight, having frequently promised to pay said draft, purchased of said P. Jewell & Co. other goods and merchandise of the value and for the sum of $— on a credit of — days.

That said draft and said account have not nor has either of them ever been paid in whole or in part.

That on the 23d day of March, 1881, said P. Jewell & Sons, in the superior court of Marion county, Indiana, in cause No. 27623, obtained judgment against said John Knight on said accepted draft and account for the sum of $440.20; that on the 21st day of April, 1881, an execution was duly issued on said judgment by the clerk of said court to the sheriff of said county, who, on the 22nd day of April, 1881, made return thereon of "*nulla bona;*" that on the 24th day of January, 1879, suits were instituted in the said superior court against said John Knight upon certain notes and to foreclose mortgages securing them and others which covered all his real estate, he having failed some time before to pay the interest due on said notes; that on or about May 19, 1879, he having made no defense thereto, decrees were rendered aggregating $45,867.85, for $28,770.90 of which said Knight was personally liable; that said aggregate sum was far greater than the value of all his property, personal and real.

3 That on the 17th day of March, 1879, said Knight, who was utterly and grossly insolvent, though in good business credit with your orators and other merchants in distant cities, secretly gave a power or, as it was called in the writing, a warrant of attorney authorizing one Alexander C. Ayres, or any attorney-at-law in the State of Indiana, to appear for him in said superior court, at any regular term thereof, waive the issuing or service of process, receive a declaration or complaint in favor of said Eliza and Fletcher & Churchman, and confess said action for such sum as should appear to said attorney to be due on two notes signed by said John Knight, attached to said warrant (one being dated December 23, 1878, for $10,000, at sixty days, in favor of said Eliza J. Knight, with 10 per cent. interest after maturity and 10 per cent. attorneys' fees, payable at Fletcher's Bank, and the other dated March 1st, 1879, for $10,000, at one day after date, in favor of said Fletcher & Churchman, under the name and style of S. A. Fletcher & Co., with 10 per cent. interest after date until paid and 10 per cent. attorneys' fees, payable at Fletcher's Bank), to permit judgment to be then and there entered up for such sum and costs, and thereupon to release all errors and to waive all right and benefit of appeal.

That the affidavit of said Knight, accompanying and attached to said warrant, averring that the same was not confessed or to be confessed for the purpose of defrauding the creditors of said Knight or any of them, was certified by one Edgar A. Brown, as notary public, who was at that time and at the time said judgment was confessed by said Ayres, as hereinafter stated, a partner of said Ayres in the practice of the law and interested in the fee which said Ayres was to be paid for acting under said warrant.

That at the time of giving said notes and of giving said warrant said John Knight had not $20,000 worth of personal property, nor could he hope to have such a quantity save by large purchases from others, and that all his real estate was mortgaged and otherwise encumbered far beyond its value.

That said Knight, with the knowledge and consent of said Eliza and Fletcher & Churchman, without any publication or notice to his former customers, including your orators, of the execution of said warrant, continued, after said 17th day of March, 1879, buying and selling goods and applying the proceeds to the use of said Eliza and Fletcher & Churchman, said purchasers being on credit and in larger quantites than usual.

That on the first day of May, 1879, said Alexander C. Ayres appeared in said superior court, and without receiving any declaration or complaint from or in favor of said Eliza and said Fletcher & Churchman or either of them, and without any action having been brought by them or in their favor, confessed a judgment in favor of said three last-named defendants, jointly but not severally, for the sum of $20,352.22, alleging the above-described warrant as his only authority.

That on the same 1st day of May, 1879, said defendants procured an execution to be levied under said judgment upon all the personal property, goods, and stock in trade of said John Knight, of the aggregate value of $15,000, including, as they well knew, said goods sold in April by said Spang, Chalfant & Co. and part of those sold by P. Jewell & Sons, and have, through said John Knight, sold and disposed of all of them, to the amount of $15,000, and have applied the proceeds thereof to their own use, knowing at the time that the goods had not been paid for.

And you orators would further show unto your honors that said notes, warrant of attorney, affidavit, judgment, and execution and each of them were and are without consideration, unauthor-
4 ized, fraudulent, and void as to your orators, and were each and all given and taken without the knowledge and against the interests and wishes of your orators.

And your orators would further show unto your honors that said John, Eliza, Fletcher & Churchman and each of them have certain day-books, journals, ledgers, cash-books, bank-books, check-books, pass-books, checks, blotters, discount books, memorandums, letters, papers, receipts, and bills, which will more fully show the matters and things herein set forth or some of them.

And your orators pray that said notes, warrant of attorney, judgment, and execution and the action of said defendants thereunder

be declared fraudulent and void as to your orators, and that said defendants and each of them be declared trustees of said goods and merchandise for your orators and be decreed and directed to account therefor to this court and pay the same into this court, and for all proper relief.

To the end, therefore, that the defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer—that is to say:

Interrogatory 1. Was not said John Knight in business buying and selling machines and machine supplies on and for a long time before the 27th day of December, 1878, and on the 1st day of March, 1879, and continuously between those dates?

2. Did not said Knight buy of Spang, Chalfant & Co. a bill of goods and merchandise on or about the 27th day of December, 1878, as set out in this bill?

3. Did not said Knight buy of Spang, Chalfant & Co. goods and merchandise on or about April 7, 1879, as set out in this bill?

4. Did said Knight accept a draft of said P. Jewell & Sons as set out in this bill?

5. Did not said Knight buy of said P. Jewell & Sons the goods and merchandise in 1879, as set out in this bill?

6. Did not said P. Jewell & Sons obtain a judgment against said Knight, as set out in this bill?

7. Was not an execution issued on said judgment and returned *nulla bona*, as stated in said bill?

8. Did not said Spang, Chalfant & Co. obtain a judgment against said Knight, as set out in said bill?

9. Was not an execution issued on said judgment and returned *nulla bona*, as stated in this bill?

10. Have said accounts, draft, judgments, or any of them been paid or satisfied?

11. Did not said Knight give a warrant of attorney at the time in the manner and for the purpose stated in said bill?

12. Did not said Ayres under said warrant confess a judgment at the time in the manner and for the amount as set out in this bill?

13. Did any attorney or other person except Ayres appear in said cause in which said judgment was confessed for or against any or either of the parties?

14. Did not such Ayres, as such attorney, commence said action, so far as it was commenced, file the said warrant and notes, and draw up the judgment and order the issuance and levy of said execution thereunder?

15. Was said action commenced otherwise than by filing said power and notes; if yea, how?

16. Was any complaint or other paper or papers save said power and said two notes filed in said cause by said Ayres or any other person; if yea, what and by whom?

17. Was not said execution in favor of said Eliza, Fletcher & Churchman issued and levied at the time and in the manner stated in said bill?

18. Was not said Knight, on the 17th day of March, 1879, and on the 1st day of May, 1879, and continuously between those dates, insolvent and unable to pay his debts?

19. Did not said Eliza, Fletcher & Churchman take possession of, hold, use, and sell as their own the personal property levied on as aforesaid by them, as stated in this bill?

20. Did not said John Knight, from and after the giving of said warrant and before the said first day of May, continue to buy goods from his former customers on credit as before without informing them that said warrant had been given?

21. Did not said John Knight, during said period from March 17th to May 1st, 1879, continue to sell machines and machine supplies, and did he not deliver or apply the proceeds to the use of said Eliza and of said Fletcher and Churchman?

22. If the interrogatory second above (20) is answered in the affirmative, state the aggregate amount of such purchases received during said period.

23. If the second preceding question (21) is answered in the affirmative, state the amount of such sales and what sums, if any, derived therefrom were so applied or delivered to said last-mentioned defendants and each of them.

24. Did not said Knight, on or about the 3d day of May, 1879, send said Spang, Chalfant & Co. a letter stating that all his personal property had been taken under said execution in favor of said defendants, and that all his real estate was encumbered far beyond its value with mortgages then being foreclosed?

25. Since the levy of said execution of May 1, 1879, have not said Eliza, Fletcher & Churchman, through said John Knight, sold large quantities of said goods taken under said levy? If yea, state for what aggregate sum.

26. Have not said Eliza, Fletcher & Churchman, through said John Knight as their agent, still in their possession part of the property so levied on; if yea, what was its invoice value?

27. Has any of said personal property been sold or disposed of otherwise than as above stated; if yea, when, how, and by whom and for what sum?

27*a*. Had said Knight, at the time of giving said power of attorney to confess judgment, personal property equal in amount to the notes given said Fletcher and Churchman and said Eliza and the amount due as purchase-money on such personal property?

27*b*. Was said Knight, at the time he gave said power of attorney, insolvent and unable to pay his debts?

27*c*. Had said Knight, at the time of giving said power of attorney, personal property equal in value to the amount of said notes; if yea, of what did it consist and what was the value of each kind?

28. What, if any, consideration other than said notes was there for said warrant of attorney given said Ayres?

29. What, if any, consideration was there for said note to said

Eliza J. Knight; when did it arise, and where is it shown? If loans, state the original and each renewal thereof, if any, with the date of each, the time it had to run, the rate of interest, and all payments and credits thereon.

6 30. What consideration, if any, was there for said note to Fletcher and Churchman? When did it arise, and where is it shown? If loans, state the original and each renewal thereof, if any, with the date of each, the time it had to run, the rate of interest, and all payments and credits thereon.

31. Were not suits commenced against said John Knight in January, 1879, to foreclose mortgages on his real estate and to obtain personal judgments against him, which resulted, in May, 1879, in judgments of the character, for the sums, and in the manner stated in this bill?

32. Was not the notary who certified to said affidavit accompanying and attached to the warrant, one Edgar A. Brown, at that time a partner of said Ayres in the practice of the law and interested in the fee said Ayres was to receive for his services thereunder?

In consideration whereof may it please your honors to grant unto your orators the most gracious writ of subpœna, issuing out of this court under the hand of the clerk and the seal of the court, to be directed to the said John Knight, Eliza J. Knight, Stoughton A. Fletcher, and Francis M. Churchman, thereby commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear in this court before your honors, and bring with them said day-books, journals, ledgers, cash-books, bank-books, discount books, check-books, checks, memorandums, letters, papers, bills, and accounts for the inspection of your orators, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orators will ever pray, etc.

PLINY JEWELL,
MARSHALL JEWELL,
CHARLES A. JEWELL,
LYMAN B. JEWELL,
CHARLES H. SPANG,
JOHN W. CHALFANT,
CAMPBELL B. HERRON,
GEORGE A. CHALFANT,
By HORACE SPEED,
Their Attorney.

HORACE SPEED, *Of Counsel.*

NOTE.—Each of the defendants is required to answer each and every of the above interrogatories.

And afterwards, to wit, at the May term of said court, on the 4th day of June, 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, Fletcher and Churchman, by Messrs. Taylor, Rand & Taylor, their solicitors, and file their answer herein in the words following, to wit:

The respondents, Stoughton A. Fletcher and Francis M. Churchman, reserving to themselves all manner of exceptions and objections to the many manifest errors and misstatements in complainant's bill of complaint, for answer thereto state that it is true that their codefendant, John Knight, had been for several years a merchant trading and doing business in the city of Indianapolis, Indiana, in the purchase and sale of machinery and machine supplies and perhaps other articles; that he was a merchant in good credit with his bankers and with the public generally, so far as these respondents are informed and believe.

7 Respondents further state that they have been engaged for many years in banking business in said city of Indianapolis under the firm name of S. A. Fletcher & Co., and have at divers times loaned said Knight large sums of money on his own personal credit without security; that said Knight would from time to time make payments on said loans and would frequently increase the loans by borrowing more, which sums were increased or diminished as business required.

Respondents have no knowledge or information as to said Knight's credit with the firms of the complainants or with his dealings with them, and had no knowledge or information that there were such firms until the filing of the bill of complaint herein; they cannot admit or deny the allegations in said bill as to the indebtedness of said John Knight to said firms or either of them, as they have no information on the subject.

Neither do they know about said alleged draft in favor of the firm of P. Jewell & Sons, nor do they know that said firms have obtained judgments against said John Knight, or the issuing of executions and the return of "*nulla bona*" on said several executions (but if any such judgments and proceedings were had they are matters of record and can be easily established).

Respondents further state that they were informed and believe that a suit was instituted in the Marion superior court against said John Knight and others to foreclose a mortgage upon certain real estate in said city of Indianapolis for a debt against said John Knight of about $28,000, and if respondents are not mistaken they were also parties to said suit; but whether Knight defended said suit respondents do not now remember, nor do they know of his having any defense thereto, and there was a decree of foreclosure, and the mortgaged property ordered sold to pay said mortgage debt, and there was also a personal judgment against said Knight for the amount of said mortgage debt, for about $28,000, some time in May, 1879, and said mortgaged property was sold under said decree of foreclosure for enough to satisfy said mortgage debt.

Respondents further state that it is true that said John Knight was and had been indebted to them for borrowed money on the first of March, 1879, in the following sums, to wit: One note for $1,000, dated February 8, 1879, payable in sixty days; one note dated February 15, 1879, for $1,000, payable at sixty days; one note for $2,000, dated December 21, 1878, payable at ninety days; one note for $4,000, dated January 2, 1879, payable at sixty days; one note for $1,500, dated February 1, 1879, payable at sixty days; and one note for $500, dated ——, 1879, at — days; and respondents had no security for said sums except the personal responsibility of said Knight, and on the 1st of March, 1879, respondents became uneasy about said indebtedness and wanted security, and said Knight executed to them his note for $10,000, payable one day after date, and delivered it to them as collateral security for said indebtedness, upon which respondents could sue if they became uneasy, and on the 17th day of March, 1879, respondents urged him to give them a cognovit upon said $10,000 note and he refused to do so unless it included also a note for $10,000 he owed his wife for borrowed money, and which note was dated the 23d day of December 1878, and said note was included in said cognovit, and said cognovit or power of attorney to confess judgment was given to Alexander C. Ayres, or any other attorney-at-law of said State, which we are informed is the usual and customary way of giving cognovits or powers of attorney to confess judgment, and Edgar A. Brown, the notory public who took the acknowledgment of said power of attorney, was at the time a
8 partner of said Ayres and interested in the fee, as respondents are informed and believe.

Respondents further state that they did not go about the streets telling persons that they had such a power of attorney, nor did they undertake or attempt to keep it secret, and on the 1st day of May, 1879, becoming uneasy about the debt, and to secure the same if they could, they caused a judgment to be entered on said cognovit for the amount of their said note and said Eliza J. Knight's note.

And respondents caused execution to issue on said judgment, directed to the sheriff of Marion county, Indiana, but the same was not levied.

Respondents further state that said John Knight, when he gave said note to respondents for $10,000, was *bona fide* indebted to these respondents in that sum, and said note to Elizabeth Knight for $10,000 these respondents were informed and believed, when said note was included in said cognovit, that the same was given for borrowed money from his wife, who had for some time previous to that time been the owner of a house and lot in the city of Indianapolis, of the value of $20,000 or about that sum, and had mortgaged it, at the request of her husband, for $10,000 and loaned him the money on said 23d of December, 1878, and this note was given her then for that loan; and these respondents then and now believe that said statements were true, and the note upon which the judgment in favor of said Eliza J. Knight was rendered was a *bona fide* indebtedness.

Respondents deny that the notes held by them and the said Eliza J. Knight on said John Knight were given without any considera-

tion, but were given for borrowed money, and they took the steps they did for the purpose of securing said indebtedness.

Respondents state that on or about the 3d day of May, 1879, they and the said Eliza J. Knight purchased said John Knight's store or stock in trade at cost; that said stock amounted to about $15,000, and they proceeded to sell said stock and run the store until the 12th of August, 1879, when they had sold and realized on said sales the sum of $5,156.52, which the said Eliza J. Knight and said respondents divided evenly between themselves and credited the same on said John Knight's indebtedness to them, respectively, and on the 12th of August, 1879, said respondents and said Eliza J. Knight divided the balance of said stock equally between them, and the invoice price of said balance of said stock of goods was $9,449.88, and these respondents credited said John Knight upon his said indebtedness to them with one-half of said invoice price of said goods, to wit, $4,724.94, and said Eliza J. Knight credited him upon his indebtedness to her with a like sum.

And on said 12th day of August, 1879, said John Knight and these respondents made a settlement, and after crediting him with the full proceeds of one-half of said stock of goods sold to them and said Eliza J. Knight on the 3d of May, 1879—with the said sum of $2,578.26 and said sum of $4,724.94—said John Knight was indebted still in the sum of $2,885.00, and he executed to them, respectively, his note for that sum, which they hold now and which is wholly unpaid, and they surrendered to him his said several notes so held by them, respectively.

Respondents further state that they, with said Eliza J. Knight, made said purchase of said John Knight of said stock of goods, in good faith, solely with a view and intent to secure a *bona fide* indebtedness from said John Knight to them, and they deny that said sale was made with the fraudulent intent to cheat, hinder, or delay the creditors of said John Knight; he was justly indebted to them, and paid them, as he had a right to do.

9 Respondents further state that they have no knowledge, information, or belief that said Knight, after he made said cognovit, continued to purchase goods on a credit in larger quantities than usual before that time, but, on the contrary, they are informed he did not purchase in as large quantities as before, but he continued to run his store as closely and economically as he could, and paid out after said cognovit was executed upon his indebtedness as much as he collected, except in the sum of $3.64.

Respondents further state that they are informed and believe that said John Knight, up to and until the 1st of May, 1879, thought and believed that he would be able to pay all his debts and carry on his business as he had heretofore done.

Respondents deny that said Knight paid these respondents any money or other thing after the 17th of March, 1879, till after the 1st of May, 1879, and after that time only said goods and amounts hereinbefore set out.

Respondents deny that said execution issued upon said judgment was levied upon said stock of goods of John Knight, and if said

stock, when said respondents and said Eliza J. Knight purchased them, included any goods sold by complainants to said John Knight these respondents are wholly ignorant of such fact and require proof of the same, and they had no knowledge that said goods had not been paid for.

Respondents deny that said notes held by them, respondents, were without consideration, unauthorized, fraudulent, or void as to complainants or any other person.

Respondents say it is true that they have bank-books showing their transactions with said John Knight, and a transcript is herewith filed and made part hereof, marked Exhibit "A."

Respondents deny that said John Knight purchased goods on a credit with a view and intent to increase his stock and applying the proceeds in payment of these respondents' and the said Eliza J. Knight's debts, but state that they are informed and believe that after the 17th March, 1879, he sold more goods than he purchased, and his stock was not as large on 3d May, 1879, as on 17th March, 1879.

Respondents, for answer to first interrogatory, answer: Yes.

For answer to 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, and 10th interrogatories, say they have no knowledge or information on the subject.

For answer to the 11th interrogatory respondents state that said Knight did give a warrant of attorney or cognovit as stated in the bill of complaint, but not for any fraudulent purpose or intent.

For answer to the 12th interrogatory they say: Yes.

For answer to said 13th interrogatory respondents say that Mr. Ayres attended to the matter in court, but who drew up the judgment respondents do not know, but suppose the clerk drew up the judgment.

For answer to 15th and 16th interrogatories respondents say: No, so far as they are informed and believe.

For answer to the 17th interrogatory respondents say: It was issued, but not levied at all.

For answer to the 18th interrogatory respondents say they believe he was.

For answer to the 19th interrogatory respondents say that said stock of goods was not levied upon, but that said Eliza J. Knight and these respondents purchased it at cost on 3d May, 1879, and they took possession of the goods so purchased and sold them, and respondents applied one-half of the proceeds as a credit upon said Knight's indebtedness to them, and said Eliza J. Knight applied one-half the proceeds to Knight's indebtedness to her.

For answer to the 20th interrogatory respondents say they have no information on the subject.

For answer to the 21st interrogatory respondents say that they have no personal knowledge as to what sales said Knight made in his store, but it is their understanding that he kept his store open during that time and made sales in the usual course of business, but they deny that he applied the proceeds or any part thereof upon their debt and, so far as they are informed, upon said debt to said Eliza J. Knight.

For answer to the 22d interrogatory respondents say they have no information on the subject.

For answer to the 23d interrogatory respondents say that they cannot state, as they do not know what sales were made; but whatever sales were made no part was applied in payment of these respondents' indebtedness or said Eliza J. Knight's, so far as they are informed.

For answer to the 24th interrogatory respondents say that after they purchased said John Knight's stock in trade on the 3d of May, 1879, they employed said John Knight to sell said stock as their agent, and he acted for them until these respondents had realized $2,578.26, and said Eliza J. Knight a like sum, and then said Eliza J. Knight and respondents divided the balance equally between them, and these respondents long since sold their part of said stock; but whether said Eliza J. Knight has any part of her half still unsold respondents know not.

For answer to 26th interrogatory respondents say for themselves: No.

For answer to the 27th interrogatory say that, as far as they know or believe, said stock of goods was disposed of as hereinbefore stated.

For answer to interrogatory 27th "A" respondents say: Do not think he had.

For answer to interrogatory 27th "B" respondents say it so turned out.

For answer to interrogatory 27th "C" respondents say that, so far as they know or believe, he had not.

For answer to 28th interrogatory respondents say: Borrowed money.

For answer to 29th interrogatory respondents say they are informed and believe that the note held by said Eliza J. Knight on said John Knight was given for borrowed money. She owned real estate in the city of Indianapolis, and on the 19th day of December, 1878, she and her husband mortgaged it for $10,000, and on the 23d of December, 1878, she loaned said sum to said John Knight, and he gave her his note on that day for said sum of $10,000 at sixty days and ten per cent. interest. It is the same note described in the cognovit, and, so far as respondents are informed, no payment had been made on the same to 3d day of May, 1879.

For answer to 30th interrogatory respondents state that said notes held by respondents on said John Knight were for borrowed money, as hereinbefore set out, and were bearing ten per cent. interest, and they make a statement of each note and its renewal, as far as they can, a part hereof, marked Exhibit "B." The $10,000 note was a collateral for said several notes hereinbefore described.

For answer to 31st interrogatory these respondents answer: Yea.

For answer to 32d interrogatory these respondents are informed said Edgar A. Brown was a partner of said Ayres in the practice of the law and, they suppose, interested in the fee.

TAYLOR, RAND & TAYLOR,
Sols. for Fletcher & Churchman.

11 UNITED STATES OF AMERICA, } ss:
District of Indiana. }

Francis M. Churchman, being duly sworn according to law, on his oath says that the statements in the foregoing answer, so far as

made upon his own knowledge, are true, and so far as they are made upon the information of others, he believes them to be true.

FRANCIS M. CHURCHMAN.

Subscribed and sworn to before me this 3d day of June, 1881.

[SEAL.] EDWIN TAYLOR,
Notary Public.

EXHIBITS A AND B.

——— ———, in account with S. A. Fletcher & Co.

Paid or renewed.

DR.			CR.		
1876.			1878.		
July 25.	Sept. 27, '76	$500 00	M'ch 11.	Renewed	$1,000 00
Sept. 27.	Nov. 25, '76	500 00	May 13.	"	1,000 00
Nov. 25.	June 27, '77	500 00	July 15.	"	1,000 00
1877.					
Jan. 27.	April 2, '77	500 00	Oct. 7.	"	1,000 00
M'ch 1.	June 2, '77	1,500 00	Dec. 9.	"	1,000 00
			1879.		
" 26.	Oct. 1, '77	575 00	Feb. 8.	"	1,000 00
" 31.	June 22, '77	500 00	Apr. 14.	"	1,000 00
June 2.	July 9, '77	2,000 00	Aug. 12.	Store	1,000 00
" 25.	Sept. 22, '77	500 00	1878.		
July 16.	Oct. 1, '77	3,000 00	June 10.	Renewed	1,000 00
Aug. 27.	Oct. 17, '77	400 00	Oct. 14.	"	1,000 00
Sept. 14.	Nov. 3, '77	1,500 00	Dec. 16.	"	1,000 00
			1879.		
" 29.	Dec. 3, '77	400 00	Feb. 15.	"	1,000 00
" 29.	Dec. 3, '77	575 00	Apr. 21.	"	1,000 00
Oct. 1.	Dec. 3, '77	4,693 10	Aug. 12.	Store	1,000 00
Nov. 1.	Dec. 5, '77	400 00	1878.		
Dec. 1.	Jan. 3, '78	575 00	June 15.	Renewed	2,000 00
" 3.	Jan. 7, '78	1,029 10	Aug. 17.	"	2,000 00
1878.					
Jan. 2.	Feb. 5, '78	575 00	Oct. 19.	"	2,000 00
Feb. 4.	April 8, '78	1,776 00	Dec. 21.	"	2,000 00
			1879.		
" 4.	Mar. 12, '78	575 00	Apr. 26.	"	2,000 00
M'ch 25.	Apr. 8, '78	500 00	Aug. 12.	Store	2,000 00
Apr. 8.	June 10, '78	1,776 00	1878.		
			June 26.	Renewed	4,000 00
Aug. 12, 1879:			Aug. 28.	"	4,000 00
Note		$1,000 00	Oct. 30.	"	4,000 00
			1879.		
Note		1,000 00	Jan. 2.	"	4,000 00
Note		2,000 00	M'ch 6.	"	4,000 00
Note		4,000 00	Aug. 12.	Store	4,000 00
Noth		1,500 00	1878.		
Note		500 00	July 26.	Renewed	1,500 00
Interest to date		188 20	Sept. 27.	"	1,500 00
			Nov. 29.	"	1,500 00
Dr.		$10,188 20	1879.		
			Feb. 1.	"	1,500 00
			Apr. 3.	"	1,500 00
			Aug. 12.	Store	1,500 00
Goods from store		$4,336 94	1879.		
Proceeds sale of store		2,578 26	M'ch 10.	Renewed	500 00
John Knight's note		2,885 00	Apr. 14.	"	500 00
Mrs. Knight's note		388 00	Aug. 12.	Store	500 00
Cr.		$10,188 20			

12 And afterwards, to wit, at the May term of said court, on the 6th day of June, 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, John Knight and Eliza J. Knight, by Messrs. Herod & Winter, their solicitors, and enter their appearances herein.

And afterwards, to wit, at the May term of said court, on the 23d day of August, 1881, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, John Knight, by Messrs. Herod & Winter, his solicitors, and files his answer herein in the words following, to wit:

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said bill contained, for answer thereunto and unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answering, says:

He admits that he became indebted to plaintiffs severally at the times and to the amounts in said bill stated; that said plaintiffs have recovered judgments against him for said indebtedness and issued executions for the collection thereof, which have been entered at the times and as stated in said bill, and that said indebtedness is still unpaid.

He also admits that on the 24th day of January, 1879, suits were commenced against him in the superior court of Marion county, Indiana, to foreclose certain mortgages which covered all his real estate, and that on or about the 19th day of May, 1879, decrees were entered foreclosing said mortgages and ordering the sale of said mortgaged real estate for the payment of the aggregate sum of $45,867.85, and that for $28,770.90 of said sum personal judgment was rendered against this defendant.

He also admits that on the 17th day of March, 1879, he executed a warrant or power of attorney authorizing Alexander C. Ayres, or any other other attorney of the State of Indiana, to appear in the superior court of Marion county, Indiana, and confess judgment in favor of the defendant, Eliza J. Knight, for such sum as should be due upon a certain promissory note held by her against this defendant for the sum of $10,000, dated December 23, 1878, and in favor of the defendants Fletcher & Churchman for such sum as should be due upon a certain promissory note held by them against this defendant for $10,000, dated March 1, 1879, and that the affidavit by him made to said warrant of attorney was sworn to before Edgar A. Brown, as notary public, who was at the time a partner of said Ayres, and, as defendant believes, interested in any fee which might be paid to said Ayres for his services in said matter.

He also admits that he did not have, at the time of giving said notes and said warrant of attorney, personal property to the amount of $20,000.

He also admits that after giving said warrant of attorney as aforesaid he continued in business as before, buying and selling goods in

the usual and ordinary course, and that he did not give notice to his former customers, including plaintiffs, of the execution of said warrant of attorney.

He also admits that on the 1st day of May, 1879, said Ayres appeared in said superior court and confessed a judgment against this defendant in favor jointly of the defendants, Eliza J. Knight and Fletcher & Churchman, for the sum of $20,352.22, but as to whether any complaints were filed or actions commenced before such
13 confession was made defendant has no information, except the statement of the bill herein, but he believes that the facts are as stated in the bill.

He also admits that an execution was issued on said judgment on the 1st day of May, 1879, which became a lien from that date upon all his personal property, goods and stock in trade, the aggregate value of which was about $15,000, but whether any of the goods purchased from any of the plaintiffs herein after said warrant of attorney was given were then in defendant's possession or became subject to said lien he does not know.

He admits that he made no defense to the foreclosure of said mortgages upon his said real estate, but says he had no defense, either legal or equitable, to make thereto, and while it is true, as in said bill stated, that the aggregate sum of $45,867.85, for which said mortgages were foreclosed, exceeded the value of said real estate, yet only $28,779.90 of said sum was the debt of this defendant, and defendant's real estate alone, which was mortgaged for the payment thereof, was amply sufficient for the payment thereof, and defendant avers that upon the sale of said real estate under said foreclosure decrees said real estate sold for enough to pay all of said personal indebtedness of defendant and he was fully discharged therefrom, and he denies that his real and personal estate were of insufficient value to pay all of said mortgage debt for which he was personally liable, and avers that his property, real and personal, was largely in excess of his personal indebtedness on account of said mortgages.

He admits that, as matters turned out, he was insolvent at the time said warrant of attorney was given, but he denies that he then thought or believed that he was insolvent, or that he continued in business after said warrant of attorney was given with any hope, expectation, or intention of adding to his personal property, to be reached or affected in any way by said warrant of attorney or any action taken thereunder, by goods purchased on credit from plaintiffs or any one else, or of applying the proceeds of any goods thereafter purchased on credit and not paid for, to the payment of said indebtedness to the defendants, Eliza J. Knight and Fletcher & Churchman, and avers the fact to be that at the time said warrant of attorney was given he fully believed that his said mortgaged real estate would sell for enough to pay all of said mortgage debt for which he was personally liable, as it in fact afterwards did, thereby relieving him from the heavy drain he had been subjected to in paying interest on all of said mortgage debt and in the taxes and repairs upon said real estate, and leaving him with no indebtedness to carry save that to said Eliza J. Knight and said Fletcher & Churchman and his

ordinary and current mercantile indebtedness; that he had managed to pull through the hard times, so far as his business was concerned, and had maintained his credit and kept up his business, which was improving with the return of good times, and that his stock on hand and the goods he was buying in the regular course of business were increasing rather than depreciating in value so that he then believed, in good faith, that if he should be allowed to continue in business he would be able to pay all his debts and liabilities in full.

He denies that said warrant of attorney was secretly given, or that during the time he continued in business after the same was given he applied the proceeds of any goods purchased by him after the same was given to any part of his indebtedness to said Eliza J. Knight or Fletcher & Churchman, or that there was no consideration for the said notes held by said Eliza J. Knight and Fletcher & Churchman, or for said warrant of attorney or the judgment confessed thereunder, or that he had any fraudulent intent whatever in executing said notes or warrant of attorney, or in permitting said judgment to be taken against him or in continuing in business or purchasing goods after said warrant of attorney was given to cheat, hinder, or delay plaintiffs or any of his creditors, but avers the truth to be that long before said warrant of attorney was given, to wit, on the 23d day of December, 1878, he borrowed from the defendant, Eliza J. Knight, the sum of ten thousand dollars of her own separate estate, and which sum she had shortly theretofore, at his instance and request, herself borrowed for the purpose of loaning to him upon mortgage of her separate real estate, and that upon receiving the same he executed to her, on said 23d day of December, 1878, his promissory note, which he *bona fide* owed to her in full at the time said warrant of attorney was executed, which was then due and for which she held no security, save his personal liability; that at the time said warrant of attorney was executed he was also *bona fide* indebted to said Fletcher & Churchman for moneys by them loaned to him in the sum of $10,000, for which they held his several promissory notes, to wit, one dated February 8, 1879, for $1,000; one dated February 15, 1879, for $1,000; one dated December 21, 1878, for $2,000; one dated January 2, 1879, for $4,000; one dated February 1, 1879, for $1,500, and one dated —— —, 1879, for $500; and also one for the aggregate of said other notes, $10,000, dated March 1, 1879, payable at one day, and which last-described note was given to said Fletcher & Churchman as collateral security for said other notes held by them and made payable at one day to enable them to bring suit thereon at any time, they having become uneasy, having no security for the sum owing them, and said action having been commenced against this defendant to foreclose said mortgages upon his real estate. Thereafter, on said 17th day of March, 1879, said Fletcher & Churchman wanted defendant to give them a warrant of attorney for the confession of a judgment on their said indebtedness so that they could take judgment at any time and before any other creditors could obtain priority; that defendant justly owed them the sum evidenced by the notes held by them, and desired to secure them in the payment thereof as far as he could,

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and was willing to give them said warrant of attorney, but was unwilling, as was his wife, said Eliza J. Knight, that they should obtain any preference over her, and therefore insisted that the said warrant of attorney should provide for the confession of a judgment to her at the same time for the amount of his said indebtedness to her, and thereupon the said warrant of attorney was executed in the form stated in the bill of complaint herein, and while defendant says and admits that he did not go about giving general notice that he had executed the same, yet he denies that there were any circumstances or acts of concealment or secrecy attending the execution of the same, and avers that the same was executed in all respects as such instruments usually are.

He further says that he hoped and believed that said defendants, Fletcher & Churchman and Eliza J. Knight, would not find it necessary to enter judgments against him by virtue of said warrant of attorney, and that upon his mortgage indebtedness being paid by the sale of the mortgaged premises he would be permitted to go on with his business, which was then prosperous, and be able to pay in full all his indebtedness, and that in this hope and expectation he did continue business in the usual and ordinary way until the first day of May, 1879, buying goods on credit to some extent, but he denies that he so bought in larger quantities than usual, and avers that his purchases on credit during said time were smaller than for the corresponding periods of former years; and he further
15 avers that all the proceeds of goods sold by him during said time, except such as were necessarily expended in the prudent and economical management of the business and support of his family, were expended in payment of his mercantile indebtedness, and that the amount of goods sold during said time largely exceeded the amount of his purchases.

He further avers that he had nothing to do with the manner in which said judgment was taken against him upon said warrant of attorney, but after the same had been taken and execution thereon issued against him, but before the same had been levied upon any of his property, he became satisfied that he could not go on in his business any longer, and in consideration of his *bona fide* indebtedness aforesaid to Eliza J. Knight and Fletcher & Churchman, and for the purpose of paying and discharging the same, as he is advised he had a right to do, and without any fraudulent intent to cheat, hinder, or delay any of his creditors, he did, on the 3d day of May, 1879, sell and transfer outright to said Eliza J. Knight and Fletcher & Churchman his entire stock in trade of goods, wares, and merchandise in said bill of complaint mentioned, and which at the time were estimated to be of the value of $15,000, and, as defendant believes, were of that value, and said defendants, Eliza J. Knight and Fletcher & Churchman, immediately took exclusive possession of all said property as the absolute owners thereof, and thereafter, until the 12th day of August, 1879, carried on in their own names jointly the said business, having employed this defendant as their agent to manage said business, and on said 12th day of August, 1879, as defendant is informed, they concluded to finally wind up

and dispose of said business, and to that end took an account of their sales and expenses to that date and divided between themselves equally the net amount realized in the business, which was $5,156.52, and also divided equally between themselves the amount of goods, wares, and merchandise and credits remaining on hand, which was $9,449.88, and appropriated their respective shares thereof to their own several use, and have long since entirely disposed of and parted with the same.

And this defendant denies all unlawful combination and fraud in said bill charged, without that any matter or thing material for him to make answer to and not herein sufficiently answered, avoided, or denied is true to the knowledge or belief of this defendant.

The respondent, John Knight, for answer to the 1st, 2d, 3d, 4th, 5th, and 6th interrogatories, says: Yes.

For answer to the 7th interrogatory he says he presumes so.

For answer to the 8th interrogatory he says: Yes.

For answer to the 9th interrogatory he says he presumes so.

For answer to 10th interrogatory he says: No.

For answer to the 11th interrogatory he says that he did give a warrant of attorney or cognovit, as stated in the bill of complaint, but not for any fraudulent purpose or intent.

For answer to the 12th interrogatory he says: Yes.

For answer to the 13th interrogatory he says: Not that he knows of.

For answer to the 14th interrogatory he says that the matter in court was left to Mr. Ayres to attend to, and he does not know what was done except that a judgment was taken and execution issued.

For answer to the 15th interrogatory he says: No, so far as he is informed.

For answer to the 16th interrogatory: No, so far as he is informed.

16 For answer to the 17th interrogatory he says: An execution was issued, but not levied.

For answer to the 18th interrogatory he says that he did not consider himself insolvent at the time; that at that time he had managed to pull through the hard times, so far as his business was concerned, and had maintained his credit and kept up his business, and that his stock on hand and the goods he was buying in the regular course of business were increasing rather than depreciating in value; that he regarded his real estate as of more value than the incumbrances thereon, and therefore confidently expected that it would at least pay the mortgage incumbrance for which he was liable, and he then thought and still thinks if he had been allowed to continue carrying on his business that he would have been able to pay all his debts and liabilities, but that he did not then have sufficient personal property if sold under execution to pay his unsecured indebtedness.

For answer to the 19th interrogatory he says that the stock of goods was not levied on, but that he sold it to said Fletcher & Churchman and said Eliza J. Knight, and they then took possession of said goods and sold them as their own.

For answer to the 20th interrogatory he says: Yes.

For answer to the 21st interrogatory he says that he did sell goods in the regular course of business and applied the money to the payment of his indebtedness as formerly in the regular course of business, but did not apply the proceeds to the use of said Eliza and said Fletcher & Churchman.

For answer to the 22d interrogatory he says that the cash receipts during that period amounted to $5,253.31; that they were paid out in the regular course of business and upon his debts other than the said indebtedness owing to said Eliza and said Fletcher & Churchman; that nothing was paid to them or either of them on said indebtedness.

For answer to the 24th interrogatory he says that he directed his clerk, Mr. Jillson, to write letters to his creditors and explain to them his failure and inability at that time to pay them, but offering to give them his note at one year, bearing ten per cent. interest, for the full amount that he owed them, respectively; that he presumes that such a letter was written to them in common with other creditors, but if any copy was preserved he is unable to find it and cannot, therefore, state positively what it contained.

For answer to the 25th interrogatory he says that after the sale of his entire stock in trade to said Fletcher & Churchman and said Eliza J. Knight, on the 3d of May, 1879, he was employed by them as their agent to sell said goods for them and sold for them goods to the amount of $5,156.52 or $2,578.26; that they then divided the balance of said goods equally between themselves; that said Eliza continued in said business, he acting as her agent, and that the whole of said stock was long since sold.

For answer to the 26th interrogatory he says: Not that he knows of.

For answer to the 27th interrogatory he says: No.

For answer to interrogatory 27th "A" he says: No.

For answer to interrogatory 27th "B" he says that his answer to this interrogatory is the same as to the 18th interrogatory.

For answer to interrogatory 27th "C" he says: No.

For answer to the 28th interrogatory he says: Nothing.

For answer to the 29th interrogatory he says that the said note held by said Eliza J. Knight was given for money that he borrowed of her; that she owned real estate in the city of Indianapolis,
17 Indiana; that in order to procure the money for him she executed a mortgage on her real estate, to wit, lot number nine (9), in Frazee's subdivision of square 3, in the city of Indianapolis, Indiana, on the 19th day of December, 1878, and that he as her husband joined in said mortgage, and afterwards, on the 23d day of December, 1878, when the money was obtained, he gave said note to her for that amount, to wit, $10,000, at sixty days, and bearing ten per cent. interest; that it has not been renewed and no payments were made on it up to May 3, 1879.

For answer to the 30th interrogatory he says that it was borrowed money, as is particularly shown in the detailed statement attached to and made part of the answer of Fletcher & Churchman to this interrogatory.

For answer to the 31st interrogatory he says: Yes.

For answer to the 32d interrogatory he says: Yes.

All which matters and things this defendant is ready to aver and prove as this court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HEROD & WINTER,
Solicitors for said Defendant.

STATE OF INDIANA, } ss:
Marion County, }

John Knight, on oath, says the facts stated in the foregoing answer are true, so far as stated upon his own knowledge, and so far as stated upon information and belief they are —, as he verily believes.

JOHN KNIGHT.

Subscribed and sworn to before me this 23d day of August, 1881. Witness my hand and notarial seal.

[SEAL.] WILLIAM A. HUGHES,
Notary Public.

And at the same time comes the defendant, Eliza J. Knight, by Messrs. Herod & Winter, her solicitors, and files her answer herein in the words following, to wit:.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to herself of exception to the many errors and insufficiencies in the said bill contained, for answer thereunto, or unto so much and such parts as she is advised it is material for her to make answer unto, answering, says:

She admits that her codefendant, John Knight, on the 27th day of December, 1878, and on the first day of May, 1879, and continuously between those dates and for a long time prior thereto, was and had been in business in his own name in buying and selling machinery and machine supplies, but as to whether his credit among plaintiffs and other merchants was good, or whether he was in the habit of buying goods on credit from plaintiffs or others, she does not know, but believes the facts are as stated in the bill of complaint, inasmuch as it is the usual and ordinary way of doing business.

She has no information as to the averments of said bill as to goods purchased by her codefendant, John Knight, from the plaintiffs, or as to what evidences of indebtedness said defendant executed to said plaintiffs, or as to the non-payment of said alleged indebtedness, or as to the alleged recovery by said plaintiffs of judgments against said defendant, or as to the issue and return of executions thereon, but such facts, if they exist, are easily susceptible of proof, and she asks that plaintiffs be required to prove the same.

She admits that suits were commenced in the superior court of Marion county, Indiana, on the 24th day of January, 1879, to foreclose certain mortgages, which covered all the real estate of the defendant, John Knight, and that on the 17th day of May, 1879, judgments were rendered in said courts for the foreclosure of

18 said mortgages and sale of the mortgaged premises for the payment of the mortgage debt, which was assessed at the aggregate sum of $45,867.85, but she says that said John Knight was only personally liable for $28,770.90 of said sum, and that the personal judgment against him was limited to this amount, and while it is true that said aggregate mortgage debt was greater in value than all said mortgaged real estate, yet all of said real estate was not mortgaged for all said debt, and the real estate that was mortgaged for the payment of the aforesaid personal indebtedness of said John Knight was of more than sufficient value to pay all said personal indebtedness, and, in fact, did fully pay and discharge said personal indebtedness at the sale thereof made under said decree of foreclosure.

She admits that on the 17th day of March, 1879, said John Knight executed a warrant or power of attorney authorizing one Alexander C. Ayres or any other attorney-at-law of the State of Indiana to appear in the superior court of Marion county, Indiana, and receive a complaint or declaration in favor of this defendant and her co-defendants, Fletcher & Churchman, and to confess judgment in favor of this defendant against the defendant, John Knight, for such sum as should be due upon a promissory note held by her against said John Knight for $10,000, dated December 23, 1878, and in favor of said Fletcher & Churchman for such sum as should be due upon a promissory note held by them against said John Knight for $10,000, dated March 1, 1879; that the affidavit thereto of said John Knight was sworn to before one Edgar A. Brown, as notary public, who at the time was a partner of said Ayres, and, as she believes, interested in any fee said Ayres should receive for his services in said matter, and that on the 1st day of May, 1879, a judgment was confessed in the superior court of Marion county by said Ayres under said warrant of attorney against said John Knight in favor of this defendant and said Fletcher & Churchman, jointly, for $20,352.22, and an execution was on the same day issued on said judgment which became a lien on all the stock in trade of goods, wares, and merchandise belonging to said John Knight, but she denies that said warrant of attorney was secretly given, and avers that, as she is informed and believes, there was nothing unusual in the execution of said instrument. She admits that she did not go about giving notice that said warrant of attorney had been executed, but submits that she was under no obligation whatever to do so, and she avers that, on the other hand, she herself did nothing whatever looking to the concealment of the execution of said warrant of attorney, and she had no knowledge or belief that either or any of her codefendants were in any way concealing the fact of the execution of said warrant of attorney.

She now believes, as events subsequently turned out, that said John Knight was insolvent when said warrant of attorney was given, and down to the time said judgment was taken, but she says she is informed and believes that he, at the time said warrant of attorney was executed and down to the time said judgment was confessed,

thought that he would be able to go on with his business in the usual way and meet and discharge all his liabilities in full.

She does not know how much personal property said John Knight had at the times when he executed to her and said Fletcher & Churchman said notes and said warrant of attorney, and if the amount of said property is a material matter in this cause she asks that plaintiffs be required to make proof of their allegations in reference thereto.

19 She admits that said John Knight continued in business after the execution of said warrant of attorney and that she knew of it at the time, but while she admits that she made no objection she denies that she ever consented thereto or was in any way consulted about or had any connection with it, nor has she any knowledge or belief that her codefendants, Fletcher & Churchman, ever consented to or were consulted about or connected therewith. She had then and has now no knowledge as to whether said John Knight made publication or gave notice to the plaintiffs or others of the execution of said warrant of attorney, and at the time had no knowledge that the said John Knight was buying goods from plaintiffs or others on credit, and while she has since been informed and therefore admits the fact to be that he did, while so carrying on business, buy some goods on credit, yet she avers that said purchases, instead of being in larger quantities than usual, were in smaller quantities than he had bought at corresponding periods of former years, and instead of the proceeds of any goods purchased during said time, whether for cash or on credit, being applied to the payment of the indebtedness aforesaid to herself and said Fletcher & Churchman, she avers that nothing whatever was paid to her, and she believes that nothing was paid to Fletcher & Churchman, and she further avers that said John Knight's sales during said time largely exceeded his purchases, so that his stock of goods on hand when judgment was so confessed under said warrant of attorney was smaller than when said warrant of attorney was executed, and that his indebtedness other than that for which said warrant of attorney was given had been decreased because, she avers, that said Knight applied to the payment of such other indebtedness all the proceeds of his business during said time except such as were necessarily consumed in the economical support of his family and by the running expense of the business.

She denies that the note held by her against said John Knight was without consideration or that to her knowledge, information, or belief the note held by Fletcher & Churchman was without consideration, or that said warrant of attorney or the judgment confessed thereunder were without consideration or that she or any of her codefendants, to her knowledge or belief, had any fraudulent intention in or by the execution of said notes and warrant of attorney, or in or by the taking of said judgment to cheat, hinder, or delay plaintiffs or any of the creditors of said John Knight, and she avers that at the date of the execution of the note so held by her against said John Knight, to wit, the 23d day of December, 1878, she loaned to him the sum of ten thousand dollars of her own separate estate, and

which she had shortly before that time and at his request, for the purpose of loaning the same to him, borrowed upon mortgage of her separate real estate, and for the repayment of the same said John Knight executed to her his promissory note described in said warrant of attorney, which remained wholly unpaid at the time said warrant of attorney was executed, and for which she had no security except the personal liability of said John Knight; that she is informed and believes that said John Knight was also *bona fide* indebted to said Fletcher & Churchman in the sum of ten thousand dollars when said warrant of attorney was executed for moneys to that amount before that time loaned by them to said John Knight, and for which they at the time held his promissory note for $10,000, dated March 1, 1879, which he had given to them at that time as collateral security for other notes by them held against him and which he had executed to them from time to time in the course of his dealings with them for moneys borrowed from them, said notes being of the dates and amounts following, to wit: one dated February 8, 1879, for $1,000; one dated February 15, 1879, for $1,000; one dated December 21, 1878, for $2,000; one dated January 2, 1879, for $4,000; one dated February 1, 1879, for $1,500, and one dated ——, 1879, for $500; that on the 1st day of March, 1879, said Fletcher and Churchman became uneasy on account of said suits being pending against said Knight for the foreclosure of said mortgages, and having no security for said debt owing to them, demanded of said John Knight that he should execute to them said note for $10,000 and make the same payable at one day, so that if it became necessary for their protection and security they could sue at once, and said Knight thereupon gave them said note; that all of the indebtedness for which the same was given was, as this defendant was informed and believes, justly owing to said Fletcher & Churchman by said Knight; that on the 17th day of March, 1879, said Fletcher & Churchman requested John Knight to give them a warrant of attorney to confess judgment in their favor for the amount due them so that they could take judgment at any time and secure priority in the payment of their said debt; that this defendant and said John Knight refused to consent that such warrant of attorney should be given unless it provided for the confession of a judgment at the same time to this defendant for the amount owing to her as aforesaid, so that said Fletcher & Churchman should acquire no priority, and said Fletcher & Churchman thereupon agreed that said warrant of attorney should be so executed, and it was accordingly done; that the debt of this defendant was then, and for a long time had been, due, and said John Knight had no defense whatever thereto and could not have prevented defendant from recovering a judgment thereon, and defendant says that in taking said warrant of attorney and in procuring judgment to be entered thereon she was, as she is advised, only exercising proper and rightful diligence to secure the payment of the moneys due to her from said John Knight; she further says that she entrusted to said Ayers to have judgment entered on said warrant of attorney and had no actual knowledge until long after

as to the proceedings attending the taking of said judgment, or as to the form in which the same was taken.

She avers that after said judgment had been taken on the 1st day of May, 1879, and execution issued, but before any levy had been made, she and her codefendants, Fletcher & Churchman, did, on the 3d day of May, 1879, jointly purchase from said John Knight his entire stock in trade of goods, wares, and merchandise in the bill of complaint mentioned, which were of the value of $15,000, and paid to said Knight the full value and price thereof in the discharge and satisfaction of his aforesaid indebedness to them, and said John Knight then delivered to them, and they jointly took, and continually thereafter, until the 12th day of August, 1819, remained in the exclusive possession and control of said property as the absolute owners thereof, and managed and carried on the said business, employing the said Knight as their agent, and on said 12th day of August, 1879, this defendant and Fletcher & Churchman finally closed up said business by dividing equally between themselves the net proceeds of all sales to that date, which amounted to five thousand one hundred and fifty-six dollars and fifty-two cents (5,156.52), and all goods on hand, which amounted to $9,449.88, and this defendant has long since sold and disposed of all said goods which were taken for her share and applied the proceeds thereof, as well as her share of said $5.156.52, to the payment of said John Knight's indebtedness to her aforesaid, and she avers that, except her share of said property so as aforesaid taken from said John Knight for her said debt, she has received no payment or satisfaction thereof, and that she has never received or converted to her own use any of the stock or merchandise of said John Knight, as
21 in the bill of complaint charged, except as herein stated, and she denies that either she or any of her codefendants, so far as she knows or believes, had any fraudulent intent in taking said judgment or in purchasing said property from said John Knight to cheat, hinder, or delay plaintiffs or any of his creditors, and avers that she only intended by said transactions to procure payment so far as she could of the debt honestly due to her from said John Knight.

If any goods purchased from the plaintiffs on credit after said warrant of attorney was executed and not paid for passed to her under said purchase she had no knowledge of it.

And said defendant, for answer to the 1st interrogatory, says: Yes.

For answer to the 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, and 10th interrogatories says she has no knowledge or information on the subject.

For answer to the 11th interrogatory she says that said Knight did give a warrant of attorney at the time and in the manner stated in the bill, but not secretly nor for any fraudulent intention.

For answer to the 12th interrogatory she says: Yes.

For answer to the 13th interrogatory she says that the whole matter was submitted to said Ayres and she has no knowledge or information as to whether any one except him appeared in the matter.

For answer to the 14th interrogatory she says that, so far as she knows, said Ayres did everything that was done in taking said judgment; she supposes the judgment was drawn up by the clerk; she thinks the execution was never ordered to be levied.

For answer to the 15th and 16th interrogatories she says: No, as she is now informed and believes.

For answer to the 17th interrogatory she says that the execution was issued as stated in the bill, but not levied at all.

For answer to the 18th interrogatory she says she believes he was.

For answer to the 19th interrogatory the personal property referred to she says was not levied upon at all, but on the 3d day of May, 1879, the defendants, Fletcher & Churchman, and this defendant purchased the said property from the defendant Knight and took possession of the same and afterwards sold it, and this defendant applied one-half the proceeds to the payment of the defendant's, John Knight's, indebtedness to her; the defendants, Fletcher & Churchman received the other one-half, and, as this defendant believes, applied it to the payment of said Knight's indebtedness to them.

For answer to the 20th interrogatory she says that he continued in business and bought some goods on credit, but whether from his former customers or without informing them that said warrant had been given she has no knowledge or information.

For answer to the 21st interrogatory she says that said Knight continued in business during said period and made sales, as she understands, in the ordinary course of business, but no part of the proceeds of such sales was applied to the payment of her debt nor, as she is informed and believes, to the debt of Fletcher & Churchman.

For answer to the 22d interrogatory she says she has no information or knowledge, except that she is informed that such purchases were smaller than in corresponding periods of former years.

For answer to 23d interrogatory she says she has no knowledge or information as to the amount, except she is informed that the sales were larger than the purchases; no part of the sales was
22 applied to the payment of her debt nor, as she is informed and believes, to the debt of the defendants, Fletcher & Churchman.

For answer to the 24th interrogatory she says she has no knowledge on the subject.

For answer to the 25th interrogatory she says that after she and the defendants, Fletcher & Churchman, had purchased said property, on the 3d day of May, 1879, they carried on business in their own names, employing the defendant, John Knight, as their agent to manage the same, and sold said property, in the ordinary course of business, until sales to the aggregate amount of $5,156.52 had been made over and above expenses; this sum they divided, said Fletcher & Churchman receiving one-half and this defendant the other; the property remaining unsold was divided in like manner, and this defendant has long since disposed of her half, and is informed and believes that said defendants, Fletcher & Churchman, have done likewise.

For answer to the 26th interrogatory she says: No.

For answer to the 27th interrogatory she says: So far as she knows or believes, all of said property was disposed of as hereinbefore stated.

For answer to interrogatory 27th "A" she says she thinks not.

For answer to interrogatory 27th "B" she says: It so turned out.

For answer to interrogatory 27th "C" she says she thinks not.

For answer to 28th interrogatory she says: For borrowed money for which the notes were given.

For answer to 29th interrogatory she says: The consideration of her note was $10,000, loaned by her to John Knight December 23, 1878, and which money she had borrowed a few days before upon mortgage of her separate real estate; John Knight executed to her his note, dated December 23d, 1878, for $10,000, at ten per cent. interest; it was never renewed, and no payments were made on it prior to May 3, 1879.

For answer to the 30th interrogatory she says she has no personal knowledge of the consideration of the notes held by said Fletcher and Churchman, but is informed and believes that it was borrowed money; she has no knowledge, personally, of the date, amount, or renewals of any of the original notes given to Fletcher & Churchman, but believes the statement thereof attached to the answer of said Fletcher & Churchman to this interrogatory is correct; the $10,000 note held by them was given as collateral for the original notes, as she is informed and believes.

For answer to the 31st interrogatory she says: Yes.

For answer to the 32d interrogatory she says she believes so.

And this defendant denies all fraud in said bill alleged, without that any other matter or thing in said bill alleged and not herein sufficiently answered, confessed, or avoided is true; all of which this defendant is ready to aver and prove as this honorable court shall direct; and she prays to be hence dismissed with her costs and charges in this behalf most wrongfully sustained.

HEROD & WINTER,
Solicitors for said Defendant.

STATE OF INDIANA, }
Marion County, } ss:

Eliza J. Knight, on oath, says the facts stated in the fore-
23 going answer of her own knowledge are true, and the facts stated on information and belief are true, as she verily believes.

ELIZA J. KNIGHT.

Subscribed and sworn to before me this 23d day of August, 1881.
Witness my hand and notarial seal.

[SEAL.] WILLIAM A. HUGHES,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 1st day of October, 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their replication herein in the words following, to wit:

These complainants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer of said defendants, for replication thereto say that they do and will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is untrue, uncertain, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready and willing to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HORACE SPEED,
Complainants' Solicitor and of Counsel.

And afterwards, to wit, at the November term of said court, on the 25th day of November, 1881, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and upon his motion it is ordered by the court that the above-entitled cause be, and the same is hereby, referred to William P. Fishback, master in chancery, who is directed to take the evidence therein and report the same with his finding thereon to the court with all convenient speed.

And afterwards, to wit, at the November term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, on the 22d day of February, 1882, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, master in chancery, and files his report herein, together with the evidence accompanying the same, in the words following, to wit:

John Knight was a merchant engaged in the railway supply business at Indianapolis. The defendants, Fletcher & Churchman, were his bankers, and the defendant, Eliza J. Knight, is his wife. The complainants are Eastern manufacturers or merchants, residing at Hartford, Connecticut, and Pittsburgh, and have sold goods to Knight for which they have never been paid.

In the month of December, 1878, Knight borrowed from his wife $10,000, which she raised by mortgaging her separate real estate. He gave her a note at the time of the loan evidencing the indebtedness. There is no evidence impeaching the *bona fides* of this transaction between Knight and his wife. The money so raised was used by Knight in his business.

Knight was also indebted to his bankers, the defendants, Fletcher & Churchman, in the sum of $10,000, or thereabouts, which indebtedness was evidenced by various promissory notes. Afterwards a note due one day after date was given by Knight to Fletcher &
24 Churchman as collateral security for the other notes. The object of giving this note was to put it in the power of Fletcher & Churchman to sue and obtain judgment at any time they desired.

Besides these Mr. Knight owed mercantile debts to manufacturers and dealers living in other cities to a considerable amount.

He was also indebted to George P. Bissell, trustee, for borrowed money to the amount of $—, which was secured by a mortgage upon real estate, and default had been made in payment of interest on this mortgage debt.

Foreclosure proceedings were threatened, and Knight had some negotiations with Bissel, the object of which was to induce him to agree to take the mortgaged property in full satisfaction of the mortgage debt and exonerate Knight's personal estate. Bissell refused and commenced suit, with the purpose, as Knight says, of taking personal judgment against him, collecting what he could by levy and sale of his personal property and enforcing his mortgage lien for the balance.

Before suit was brought by Bissell, Fletcher & Churchman were apprised of Knight's efforts to settle with Bissell, and had informed Knight that if those efforts were fruitless they, Fletcher & Churchman, would protect themselves, and requested Knight to execute for them a cognovit upon which they could take judgment at any time they saw fit. Mrs. Knight, hearing of this, insisted that she should be put on an equal footing with Fletcher & Churchman, and it was finally agreed that the cognovit should include her debt also, and it was so made and executed on the 17th day of March, A. D. 1879. By this arrangement it was in the power of Fletcher & Churchman at any time to take judgment; it was left wholly to them to determine when judgment should be taken, though Knight begged them to postpone it as long as they could, saying he still had hopes of settling with Bissell. Fletcher & Churchman did not agree to delay, but they did wait until the first of May, 1879, before they took any steps to put their claim in judgment. Meanwhile, from the date of the cognovit till May 1st, a period of — weeks, Knight went on with his business as usual, buying and selling goods, and holding himself out as a solvent merchant worthy of credit. His standing as a business man was good, and he could buy goods on credit for any reasonable amount during that time, and did buy to replenish his stock as he had been in the habit of doing.

Knight had been dealing with Spang, Chalfant & Co. during a period of four years, and with the complainants, Pliny Jewell & Sons, for eighteen months prior to May 1, 1879.

The goods for which he owed Jewell & Sons were purchased as follows: February 19, 1879, $379.36.

The goods for which he owed Spang, Chalfant & Co. were pur-

chased as follows: December 17, 1878, $75.94; April 7, 1879, $849.80, on 90 days' credit. No part of this was paid.

Judgments have been recovered by complainants on their respective accounts, executions issued, and returns of *nulla bona* made by the sheriff.

On or about May 1, 1879, Mr. Churchman heard that Bissell was pressing his suit to judgment, and he, therefore, requested Mr. Ayres, the attorney named in the cognovit, to proceed at once to take judgment, and judgments were entered in the superior court of Marion county May —, 1879, for the amount due Fletcher & Churchman and Mrs. Knight, respectively.

Executions were promptly issued and came to the hands of the sheriff May —, 1879. No levy was made, though the lien of
25 the execution attached to the personal property of Knight when the writ came to the sheriff's hands provided that such a writ, issued upon a judgment so obtained, could create a lien.

And here arises the first question in the case:

Were not the cognovit, judgment, and execution all vitiated by the conduct of the parties after the cognovit was executed and before the judgments were entered?

A creditor has a right to seek and obtain a preference from an insolvent debtor, but in any transactions between debtor and creditor for this purpose the creditor must act with an eye single to his own interests, and if the element of favor to the debtor enters into the arrangement, especially if the favor so given is or probably will be hurtful to other creditors, equity will set aside the transaction and hold it to be void as to such creditors.

While it is true in this case that Fletcher & Churchman did not agree with Knight when the cognovit was given or at any time that they would delay taking judgment, — is true that Knight asked them to delay and that the instrument empowering them to have judgment entered at any time was kept by them from March 17th to May 1st without any effort to take judgment, they knowing, meanwhile, that Knight was carrying on his business as usual. This was enough, in the opinion of the master, to vitiate the judgment and to prevent the acquiring of a preferential lien by the issuing and levy of an execution upon such judgment.

But it is claimed by defendants that they acquired title to the goods in Knight's store by virtue of the sale claimed to have been made by Knight to Fletcher & Churchman and Mrs. Knight on the 3d of May.

What was that transaction?

Knight says that after the judgments were taken and execution issued it was suggested that more money could be realized out of the stock of goods by selling them from the store in the usual way than by a sale on execution. He gave an opinion that the stock was worth $20,000. Accordingly an agreement was made between Knight and Fletcher & Churchman and Mrs. Knight that Knight should turn over the stock to them in satisfaction of his debts to them, which agreement was in writing and signed by Fletcher & Churchman and Mrs. Knight, but whether by Knight himself he is

not clear, but thinks he did not sign it. The written agreement is lost. (See Ex., pp. 14, 15, 16; also pp. 31, 34, 35, 36.) The stock on hand was really not worth $20,000; it was $5,000 or $6,000 short of that, as shown by subsequent invoice and sales after the arrangement was made. May 3, 1870, Knight went in the store as agent for Fletcher & Churchman and Mrs. Knight without any agreement as to his salary, though he took out of the proceeds of sales ten to fifteen dollars per week for his services.

The business was carried on until late in July or early in August, when Churchman became dissatisfied and the partnership was dissolved. The goods and proceeds of sales were divided equally between Churchman and Mrs. Knight, and Churchman's share of the goods was removed from the store. It was then ascertained that the stock and money received by Mr. Churchman did not pay Knight's debt by about $2,800, and for this Knight gave his note.

Mr. Churchman's evidence is that after judgment was taken and execution issued, but before a levy, Knight told him that if the goods were sold out by the sheriff little, if anything, would be made on his debt, and that it would be better to run the store and work off the goods in the regular way; that he then made arrangements by which he and Mrs. Knight bought the goods for their debts.

This was May 2d or 3d. Possession was taken and Mr.
26 Knight was appointed agent to go on and sell the goods out of the store. He became dissatisfied after a few months, and then it was agreed that the money realized from the sales and the unsold goods should be divided equally between them—him and Mrs. Knight—which was done. Knight had said to him when he agreed to take the goods that there was enough of them to pay his debts; that he gave him, in addition to the goods, a claim against a bankrupt concern from which nothing was ever realized; that when the goods and proceeds of sales were divided there was not enough to pay his claim, and Knight gave him a note for $2,805 for the unpaid balance.

When the goods were divided Mrs. Knight went on with the business in her own name.

Mr. Ayres, who was Mrs. Knight's counsel, was consulted about the sale of the goods to Churchman and Mrs. Knight, and advised it, because he was convinced that a sale upon execution would sacrifice the goods and realize much less than if they were disposed of in the ordinary way. Knight said when the sale was made that he thought the stock was worth $20,000.

Mr. Ayres and Churchman say that the object of Knight in making the sale was to give what he considered to be a lawful preference to Churchman and Mrs. Knight.

This is enough of the evidence to present the question made by complainant's counsel touching the validity of this transaction—the sale and transfer of the goods to Churchman and Mrs. Knight. The evidence in full is filed with the report, and is not so voluminous but that the court and counsel can readily refer to it for fuller information if it is desired.

Counsel for complainants denies the right of Churchman and Mrs.

Knight to buy in the goods for their private benefit, because on May 3d, 1879, the date of the transaction, they were judgment creditors of Knight, and had an execution in the hands of the sheriff which they were claiming to be a lien upon the goods. That though the obtaining of the cognovit and judgment in the way in which they were obtained made them and the execution based upon them invalid or void as to Knight's general creditors, they were, nevertheless, good and binding between Knight and Churchman and Mrs. Knight, and put Churchman and Mrs. Knight in the position of trustees, so that they could not buy the property for their own benefit.

This view of the question has been presented with great force of reasoning, and while no authorities in point have been presented, an effort has been made to bring the case within the reasoning of some decisions in which analogous questions are discussed and determined.

The right of an insolvent debtor to prefer one or more of his creditors is not controverted, but it is said in this case that the attempt to procure a preference by means of the cognovit, judgment, and execution—an attempt which we have seen was not successful—outlawed Churchman and Mrs. Knight by putting them in a position where they could not exercise the right that other creditors were allowed. It is admitted that any other creditors could have bought Knight's goods and taken them in satisfaction of debt on May 3d. The master is of the opinion that as Churchman and Mrs. Knight took nothing under their cognovit, judgment, and execution they were at liberty to secure themselves by the purchase of Knight's goods.

I therefore recommend that the complainant's bill be dismissed for want of equity.

Respectfully submitted,

W. P. FISHBACK, *Master.*

27 UNITED STATES OF AMERICA } *ss:*
State of Indiana, }

In the United States Circuit Court for the District of Indiana.

PLINY JEWELL *et al.* }
vs. } No. 7188.
JOHN KNIGHT *et al.* }

Appearances: For plaintiffs, Horace Speed, Esq.; for defendants, Messrs. Taylor, Rand & Taylor, Messrs. Herod & Winter.

Testimony taken in the above-entitled cause before W. P. Fishback, master in chancery, January 17, 18, and 20, 1882, at his office in the city of Indianapolis.

Plaintiffs and defendants both request that the evidence offered be taken down by the master or by some one in his presence, and the master directs Charles P. Watson to report the evidence in compliance with such request.

JOHN KNIGHT, called for complainants, being first duly sworn, deposes and says:

Direct interrogatories by Mr. HORACE SPEED:

A. My name is John Knight; age, 51; in steam-fitters' and plumbers' supplies; have been engaged in that business about 20 years; all of the time in this city, and most of the time on South Delaware street. In December, 1878, I borrowed $10,000 of my wife, which was deposited in bank and checks drawn against it to pay off debts for merchandise used in my business, with the exception of $3,000 of it, which I paid Fletcher & Churchman for money I had borrowed of them to carry on a water-works contract I had at Peru. The other $7,000 was used in paying for merchandise used in my business at the store here. The money was paid to different firms in different sums, some of them $100, some $200, some $500, and some $700.

Q. In January, 1879, I believe you were sued by George P. Bissell & Co. to foreclose a real-estate mortgage for some $48,000, and to take a personal judgment for $28,000 of that amount?

A. I don't know that that they sued for $48,000.

Q. It terminated in a judgment for that amount, did it not?

A. I don't think there was.

Judge RAND: The record is the best evidence of that fact.

The MASTER: The witness does not know the amount; of course the fact as to the judgment is admitted.

Q. Your property at that time consisted of real estate which was all encumbered and of personal property, did it not?

A. Yes, sir; I believe it did.

Q. All your real estate was mortgaged and both those mortgages were foreclosed in 1879, were they not?

A. There was only one piece that was mortgaged and that was the city hall.

Q. Was not there another judgment after that taken by the Connecticut Mutual Life Insurance Company?

A. Not that I know of. The first party that ever sued me in the world was George P. Bissell & Co.—until Jewell.

Q. About what amount of personal property had you March 2, 1879?

A. I thought I had about $20,000 of personal property, consisting of merchandise at the store-houses and wagons and such things as that.

28 Q. About what was the amount of your indebtedness for goods, if any, on the 2d day of March, 1879, and also your indebtedness on the 17th of March, 1879?

A. It will take some time to answer that question, but I will furnish the information before the examination is closed.

Q. In your answer to the bill in this case you say that on March 2d, 1879, you gave to Fletcher & Churchman, your bankers, a note for $10,000 at one day, because they were uneasy and pressing you.

When did they first begin to make demands, and when did they first show themselves uneasy in regard to your condition?

A. I presume it was a little before that time, on account of George Bissell & Co. commencing suit against me. I could not tell you how many days it was before then.

Q. In what way did they press you?

A. Every time I would go to the bank Mr. Churchman would want to know if I could not pay some money on the notes I owed him.

Q. Were the notes past due?

A. Yes, sir.

Q. How many of them?

A. The amount was about $10,000. I could not tell you exactly how many there were of them, but they were all past due.

Q. They were not renewed notes? You had given no renewal notes for them?

A. I think, probably, I had, and those were not past due.

Q. How long had it been since you had been making payments on them?

A. I had been paying the interest right up to that time.

Q. About March 2d?

A. Yes, sir.

Q. On March 17, you say in your answer, that being further pressed by Fletcher & Co. you gave a power of attorney to A. C. Ayres, an attorney-at-law, to enter appearance and confess judgment in favor of Mrs. Knight upon her note for $10,000, and for Fletcher & Co. upon their note for $10,000 upon a declaration being filed. What negotiations, if any, led to your giving Fletcher & Churchman and Mrs. Knight this power of attorney?

A. George P. Bissell, I understood from his attorney, was going to foreclose on the city hall. I went to see him (Howard Cale) and asked if he would not take the property for the amount of the mortgage. He said he could not do anything with it; that I would have to see Mr. Bissell, who would be here in a few weeks. I asked him if he could not wait until he came. He said he did not know but he could. Mr. Bissell finally came here and I went to see him. He said he could not take the property for the amount of the mortgage; that he had commenced suit against me for my personal property; would attach that first and take the balance of it out of the building. That was the way the judgment was given to Mr. Churchman and Mrs. Knight to secure them.

Q. About what time did you go to see Mr. Cale?

A. I could not tell exactly, but it was some time in February, perhaps.

Q. And when did you see Bissell?

A. I think it was along the fore part of March. I could not swear to the date.

Q. You saw Mr. Bissell, then, before this warrant of attorney was given?

A. Yes, sir—that is, to the best of my recollection, any way.

29 Q. You did not write to Mr. Bissell between the time you saw Mr. Cale and the time you saw Mr. Bissell, did you?

A. I don't think I did.

Q. Bissell made you a positive answer at the time that he could not take the real estate, and he proposed to take personal judgment?

A. Yes, sir.

Q. When Bissell told you that you knew very well you would not be able to go on in business, this judgment being taken against you?

A. If he would have taken the property I could have went right along in business.

Q. But he had already told you he would not do that. You knew then you could not go on in business, did you not?

A. If I could have fixed it up in some way I could have gone on in business; but if he took a personal judgment against me I could not go on in business.

Q. He told you particularly he would take a personal judgment. What hope had you, then, after his telling you that, that you could go on in business?

A. The hope anybody else has—to bridge the thing over the best I could.

Q. What hope had you? You say you knew, as soon as he told you that, that you were going to fail—unless you could make this arrangement with him you would have to fail—and he positively refused to make any arrangement, did he not?

A. I did not know but what I could get help from other parties to help me along at the time.

Q. You had no arrangement for help from anybody else?

A. I had no positive arrangement.

Q. No promise had you from any one?

A. No, sir; but I had always been successful in business here, and was never sued by anybody until he sued me.

Q. Did Bissell tell you at what time he would take this judgment?

A. No, sir; he did not.

Q. There was no obstacle to his taking it at any time?

A. No, sir; not that I know of.

Q. On the 17th day of March, 1879, you say, in your answer, that you gave this power of attorney, and that it was confessed on the 1st of May, 1879. Why was it held from the 17th of March to the 1st of May?

A. Bissell had not taken a judgment, and I did not know but what he could be persuaded to take the city hall, and I did not want the thing closed up down there.

Q. Did you make any further effort to get him to do that?

A. I think I did. I made every effort in the world.

Q. Personally or by writing?

A. Personally.

Q. When did you see him after that time?

A. I saw him in Martindale's office, I think, when Martindale used to have his office over the Journal office—some time in April, 1879, I think it was; I don't know the date. He gave me a positive

answer then that he would go ahead and take a judgment against me, and I went right to Churchman and told him that George P. Bissell was going to take a judgment against me, and he and Mrs. Knight had better close in on the thing and take it.

Q. And on that statement of yours he ordered the judgment confessed?

A. Yes, sir.

30 Q. What understanding or agreement, if any, was there between you and Fletcher & Churchman and Mrs. Knight or any of you as to the holding of that power of attorney for any time?

A. There was no understanding or agreement.

Q. Why was it held, then?

A. It was held by me asking Mr. Churchman and Mrs. Knight to keep off as long as they could.

Q. When did you ask them that?

A. Several times between the time the cognovit was executed and the time they took the judgment.

Q. Did you ask them at the time the cognovit was given to hold it as long as they could?

A. I don't know as it was at the time, but I saw Mr. Churchman nearly every day on business and I know the matter came up several times between us.

Q. Did Mr. Churchman understand your position in regard to the Bissell matter? Had you told him anything at all about it?

A. Mr. Churchman knew all about it.

Q. Did he know that Bissell had refused positively to receive your real estate?

A. I think he did from what I told him. I don't know whether he ever heard it from Bissell or not.

Q. Did Mrs. Knight also know those facts?

A. She did.

Q. How long had you been dealing with Spang, Chalfant & Co., complainants in this case, before March 17, 1879?

A. I suppose four years, probably.

Q. Had you been dealing with them at all regularly?

A. I bought of different parties. Sometimes of Spang, Chalfant & Co. and sometimes of Byers & Co.

Q. How long have you been dealing with Pliny Jewell & Sons?

A. I guess not over a year and a half.

Q. Had you been dealing much with them?

A. Not a great deal. I don't know whether there was more than two or three invoices from them. I cannot remember whether there was or not.

Q. What was the amount of your sales from March 17, 1879, to May 1, 1879, and what was the amount of your purchases of goods during the same period?

A. Purchases, $4,113.90; sales, $5,255.31.

Q. Did Fletcher & Churchman know that you were going on in business as before after March 17, 1879?

A. I think they did.

Q. What causes you to believe that?

A. There was no sheriff down there to close the concern up at that time.

Q. Were you still checking out money from that bank?

A. Whenever I had any in there to check out to pay debts with.

Q. Had you any in there to pay out?

A. I think there was money deposited every day and money checked out.

Q. They knew you were buying then as you were before?

A. Yes, sir; but just as little as I possibly could get along with.

Q. Did they know you were buying goods on credit as usual?

(By Judge RAND:) State what you know.

A. I could not say that they knew I was buying them on credit; no, sir.

31 Q. Why did you say you presumed so?

A. Because all the goods were bought on thirty, sixty, and ninety days' time.

Q. You had uniformly before been buying in that way?

A. Yes, sir.

Q. And they knew you had been buying before that in that way?

A. Yes, sir.

Q. There was no agreement you should change your mode of business after the warrant of attorney was given?

A. No, sir.

Q. No understanding you should?

A. No, sir.

Q. Did Mrs. Knight also know you were buying goods in this manner?

A. I think she did.

Q. You presume so for the same reasons you have given in regard to Fletcher & Churchman?

A. Yes, sir.

Q. On May 1, 1879, it seems that Mr. Ayres confessed a judgment and had execution issued at once, and that it was held for two days. Why was it held and not levied immediately?

A. I could not tell. I had nothing to do with holding it.

Q. When was it first proposed that you should sell out your stock of goods to Fletcher & Churchman and Mrs. Knight?

A. I did not consider it was a sale. They took the goods, what there was in the store, for the amount I owed them.

Q. What sort of a transaction did you consider it—that they levied the execution on the goods?

A. Yes, sir.

Q. Did they levy?

A. Well, it was turned over to them. I was asked about how much I thought the goods in the store were worth—Mr. Churchman and Mrs. Knight both—and I told them I thought it would run somewhere near $20,000. That was the best of my judgment at that time. They took the goods in the store for the amount of money I owed them—$20,000.

Q. The judgment was for a little more than $20,000?

A. Well, whatever it was; I don't know exactly what it was.

Q. They took the goods, then, on the 3d of May ,1879, for whatever amount of money you then owed them on that judgment?

A. Yes, sir.

Q. When was that agreement made?

A. I don't know as there was any agreement made about it until Churchman came down there and took possession of the store.

Q. On what day was that?

A. I don't remember. Somewhere about the 3d of May, though.

Q. Was there any written agreement of that drawn up?

A. Yes, sir.

Q. Where is that agreement?

A. I don't know. It was lost, I expect.

Q. Who drew it up?

A. Mr. Ayres.

Q. Was a copy of the agreement given to you?

32 A. No, sir. I don't think any copy was made of it. It was suggested to write that agreement down in one of our books, but I do not think it was ever written down on the face of the ledger.

Q. What was it written on?

A. On a piece of legal cap.

Q. Was it signed; if so, by whom?

A. I think it was signed by all parties.

Q. Who signed for Fletcher & Co.?

A. I think Mr. Churchman did.

Q. Did you sign it?

A. I don't believe I did.

Q. All parties did not sign it, then?

A. Mrs. Knight and Mr. Churchman did. I would not be positive whether it was signed by me or not.

Q. Was the agreement between you, Fletcher & Co., and Mrs. Knight?

A. I could not swear positively.

Q. Was it a written agreement between you and them to take those goods for their debt?

A. It was an agreement signed by Mr. Churchman and Mrs. Knight. I feel positive about that. I don't think I had any right to sign that agreement, if I remember right.

Q. Was there any agreement between you and them that they should receive the goods in your store in satisfaction of your debts to them?

A. That was what the paper was written for. It was more of a receipt than anything else.

Q. About what was the phraseology of it?

A. I could not tell you for the life of me.

Q. It acknowledged the receipt of the goods in satisfaction of the debts?

A. That was what it was written up for.

Q. It was made about the 3d of May, 1879?

A. Yes, sir; I think so. We have all looked for that paper a

great many times. I am sorry it has been lost, because it would explain the whole matter, so far as these parties go.

Q. Take your ledger and turn to the account of Spang, Chalfant & Co., and state if, on the 17th day of December, 1878, or about that time, you bought of that firm goods to the amount of $75.94.

A. Yes, sir; credited December 24th.

Q. How many days was that credit?

A. I expect 90 days. We have been in the habit of buying on that time.

Q. Then on the 7th of April, 1879, you bought $849.80 of them?

A. Yes, sir.

Q. Was it on credit?

A. We bought of them altogether on credit of about 90 days.

Q. Neither of those sums on the 1st of May, 1879, had been paid.

A. No, sir.

Q. Nor on the 3d of May, 1879?

A. No, sir.

Q. In May, 1881, did Spang, Chalfant & Co. obtain a judgment in the Federal court against you for this indebtedness?

A. I could not say whether they did or not. I know they took a judgment against me, but I do not know what date it was.

The hour of 12 o'clock having arrived, the further hearing of the case was adjourned till 2 o'clock p. m.

33 TWO O'CLOCK P. M.

Parties met pursuant to adjournment, and the direct examination of JOHN KNIGHT was continued by Mr. SPEED as follows:

Q. You say in December, 1878, you borrowed $10,000 of your wife. Why did you borrow of her instead of your bankers, of whom you had usually been borrowing?

A. They did not want to lend me any more money, I suppose. I did not want to borrow it of them.

Q. Had you asked them at all?

A. No, sir; I was running a larger account there than I thought proper to run there.

Q. When was your last original loan of them? Do your books show?

A. I presume they do; I could not tell.

Q. Why did you use $3,000 of this money in payment of part of your indebtedness to Fletcher & Churchman?

A. It was money I had borrowed of them to carry on a job at Peru.

Q. Had that come due?

A. Yes, sir.

Q. How much overdue was it, if at all?

A. Several months; I could not tell how many.

Q. Had there been several notes given for that amount?

A. I think I renewed them once.

Q. And that renewal had been several months due?

A. I don't know whether it had been several months due; I presume it was a little overdue, but not much after the renewal.

Q. That loan of $10,000 was secured by mortgage on Mrs. Knight's property, was it not?

A. Yes, sir; she made a mortgage, and loaned me the money.

Q. When did Mrs. Knight come into possession of that property?

A. It was about 10 years ago.

Q. What was its condition at that time?

A. It was an unimproved lot; well, there was an old church on it, but the improvements were not worth very much.

Q. Had it been changed as to its improvements after the time she came into possession of it and before this mortgage was executed on it; if so, to what amount?

A. Yes, sir; I suppose to the amount of $25,000.

Q. With whose funds had those improvements been put on?

A. Partly with Mrs. Knight's and partly with my own.

Q. About how much of your funds went into those improvements?

A. I suppose twenty-odd thousand dollars.

Q. About what time were those improvements put on?

A. In 1871 and 1872, if I remember right.

Q. What was the value of your property at that time?

A. All my property?

Q. Yes; unencumbered property.

A. Somewhere about $80,000; I should judge $60,000 to $80,000.

Q. I believe you said all your real estate was encumbered on the 2d and 17th of March, 1879?

A. I believe it was.

Q. Was that property foreclosed upon and taken in 1879 by the mortgages?

A. I don't remember whether it was 1879 or 1880.

Q. It was all mortgaged to Bissell?

34 A. The city hall was.

Q. Was that all the real estate you had?

A. No, sir; I had a piece of property upon Pennsylvania street mortgaged to Horace Parrott for $3,000; he purchased and took it a little over a year ago for the amount of the mortgage.

Q. The Bissell property, then, was also taken for the amount of the mortgage?

A. Yes, sir.

Q. Then all your real estate went for the mortgages which were upon it?

A. Yes, sir.

Q. Was the decree of foreclosure entirely paid by the sale of the land under the mortgages?

A. I think so.

Q. Has Bissell no personal judgment against you still unpaid?

A. I think not; at least I have understood so from my attorneys, who attended to the case.

Q. And Parrott has none?

A. No, sir.

Q. Nor the Connecticut Mutual Life Insurance Company has none?

A. No, sir.

Q. Fletcher & Churchman, in their answer in this case, say, at page 4, that "your indebtedness to them on March 1st, 1879, was one note for $1,000, dated February 8th, 1879, payable in sixty days; one note dated February 15th, 1879, for $1,000, payable at sixty days; one note for $2,000, dated December 21, 1878, payable at ninety days; one note for $4,000, dated January 2, 1879, at sixty days; one note for $1,500, dated February 1, 1879, payable at sixty days, and one note for $500, dated ——, 1879, at — days, and that they had no security for those sums, except your personal responsibility, and on the 1st of March they became uneasy about that indebtedness and wanted security, and you executed to them your note for $10,000, payable one day after date, and delivered it to them as collateral security for those other notes, upon which they could sue if they became uneasy; and on the 17th day of March, 1879, they urged you to give them a cognovit upon said $10,000, and you refused to do so unless it included also a note for $10,000 you owed your wife for borrowed money, which note was dated December 23, 1878, and that a cognovit was given including that note to your wife. Now, in your examination this morning you stated that all your notes to Fletcher & Churchman were due on the 2d of March, and many of them long past due when you gave them this $10,000 note. Is this account given by Fletcher & Churchman correct, or was your account given this morning correct?

A. I suppose Mr. Churchman's statement would be more correct than mine, because he has went into dates. I had an idea the notes were all due. If I made a mistake of course I will have to take it back.

Q. According to your notion all the notes were due?

A. I think they were; most of them were due. I think there was only one you read over there that was not due.

Q. After hearing this read over does it refresh your recollection so you can say what the truth of the matter is as to when the notes were due?

A. No, sir; I cannot say; the best of my recollection is they were all due when the judgment was taken.

Q. Was the note dated March 2d given when those other notes were due?

A. That $10,000 note was given, as I understand, when the other notes were due.

35 Q. Was this $10,000 note given on the day it bears date?

A. Yes, sir; I never signed a note that was not dated the right day.

Q. What gave you the impression that all those notes were due; you had a bank account, had you not?

A. Yes, sir.

Q. You had an account of bills payable in your store?

A. Yes, sir.

Q. What gave you the impression, then, these notes were all due?

A. In settling up the account with Mr. Churchman, I had no other idea but what they were due; at least, I have no other idea now. There may possibly have been one that was not due, but he wanted the matter all settled up and put into one note. One note might not have been due, but the best of my recollection is they were all due.

Q. When was the $10,000 note given—on the 2d day of March, 1879?

A. Yes, sir; according to its date. If they were all not due it was given in settlement with the other notes, what was due and what was not due, and put it all into one note; I suppose they were all due.

Q. Fletcher & Churchman say here, "It was given to them as collateral security for said indebtedness." Then they did not give up to you those notes, did they, upon your making out this $10,000 note on March 2d?

A. My impression is they did.

Q. Then this $10,000 note was not given as collateral security, was it?

A. I am not positive whether they delivered the notes over to me that day or not.

Q. Do you remember about when they delivered them over?

A. No; I do not.

Q. Is it not a fact that they did not deliver them over until the 12th day of August, 1879?

A. I could not swear to that.

Q. Can you remember whether the note for $10,000 was given upon their special request as collateral security for that indebtedness so they could sue upon it when they became uneasy?

A. Yes, sir.

Q. It was given them for that purpose, payable one day after date?

A. Yes, sir.

Q. What led to the giving of the $10,000 note?

A. Geo. P. Bissell & Co. were about to take judgment against me. Mr. Churchman had been pressing me for money, and formally told me must be secured in some way or other.

Q. That was before this note of March 2d was given?

A. It was about that time—I suppose it was before; yes, sir.

Q. Before the 2d day of March, what led to the giving of this note?

A. In settlement of the other notes Mr. Churchman wanted to be secured, and I secured him by giving him this note so he could come in ahead of the other judgments. He was pressing me for the money every time he saw me, and told me he must be secured in some way, shape, or form.

Q. How long did this continue?

A. For several weeks.

Q. Before the 2d of March, 1879?

36 A. I do not know whether it was before the 2d of March, 1879, or not; you have got me so mixed up I cannot remember dates.

Q. I am trying to get you to fix the date. Before the 2d of March, 1879, what occurred between you and Fletcher & Churchman that caused you to give them this note so they could sue it at once?

A. Because Geo. P. Bissell was going to take a judgment against me on my personal property.

Q. Had they done it?

A. They had threatened to do it—George P. Bissell himself.

Q. That was before the 2d of March?

A. I think it was.

Q. Are you certain of it?

A. I am not certain to the date.

Q. You are not certain he threatened you before the 2d of March?

A. Yes, sir; I am.

Q. Had you talked to Fletcher & Churchman about that before the 2d of March?

A. Mr. Churchman called my attention to it in the first place; said they were going to sue me and take my property, and he must be secured.

Q. Did he refer to your real estate or personal property also?

A. My personal property also.

Q. You do not know he referred to your personal property and not merely to your real estate?

A. As a general thing, they attach a person's personal property first.

Q. There was no attachment in this case?

A. No, sir; it was foreclosing a mortgage. Mr. Bissell said he could make the amount of money out of my personal property and go on to the real estate hereafter.

Q. Did he say that before March 2d?

A. I could not say whether he did or not.

Q. I am trying to get at what was said and done before the 2d day of March which led to your giving this $10,000 note to Fletcher & Churchman. What occurred between you and Churchman which led to his asking and you agreeing to give this $10,000 note?

A. I am trying to explain to you what caused me to give that note.

Q. But you say you don't know whether these things you mention happened before the 2d of March or not?

A. I presume they did, but they might have happened afterwards.

Q. Start from your first negotiation with Fletcher & Churchman for this $10,000 note and tell me what happened until it was executed.

A. I went up to the bank and Churchman called me into the back part of his office and said: "John, I suppose you are aware that George P. Bissell & Co. are bringing suit against you to recover the money they loaned you on the city hall?" I said: "I have heard something about it, but I cannot do any more than I have done. I have done all I can towards paying them off—that is, to keep up the interest and taxes." Churchman said he understood

they were going to attach my personal property, and said he: "Before that is done I want to be made secure. You must secure me in some shape or form," and that is what led to the $10,000 note and the filing of the cognovit.

Q. When he told you that you must secure him in some shape what answer did you make?

A. I told him I owed Mrs. Knight $10,000, and if I secured him I would have to secure her also equally with him. The note was drawn up and I signed it.

37 Q. Did he suggest to you or did you suggest to him the making of a note for $10,000 payable in one day?

A. He suggested it to me.

Q. Was Mrs. Knight's note due at that time?

A. I think it was, but I don't remember the date of the note.

Q. If Mrs. Knight's note was due one day after date, why did you tell Churchman that if you gave him a note payable one day after date you would also have to secure Mrs. Knight? Was there any talk at that time of a cognovit?

A. I don't know but what I am getting a little ahead of my story. I supposed you were asking me about the giving of the cognovit and note together.

Q. No, sir. The cognovit was given on the 17th of March and the note itself was given the 2d of March.

A. It was when the cognovit was given that I objected to giving Churchman a cognovit, or she objected to it, without she was included.

Q. Then at the time this $10,000 note was given you did not say anything to Churchman about Mrs. Knight's note?

A. I don't think I did. Those things occurred a year or two ago, and it is pretty hard to remember all the conversations.

Q. Do you mean to say, then, that upon your going to Churchman's office one day after he had suggested your indebtedness to him several times he called you into his back office, and on his saying he must be secured in some way, and without any further solicitation, he asked you to make him a note for $10,000 payable one day after date, and you, without any further conversation with him or agreement, gave him that note? Or was there other conversation and other agreements?

A. There was other conversation, of course. I could not repeat the conversation to you now. I did not suppose it amounted to anything, and did not note it down. To make him more secure I gave him a $10,000 note.

Q. You cannot remember whether that was given to him as collateral security or given in payment of those other notes?

A. I cannot.

Q. Can you remember whether those notes were given up to you then by him?

A. I have an idea that they were given up to me at the time.

Q. On the 2d day of March, 1879?

A. It might have been a few days afterwards, or it might have been on the 2d of March. It has been so long ago I declare I can-

not remember much about that transaction, about giving me the notes back.

Q. Are you certain the notes were given up to you before the 12th of August, 1879?

A. I would not be certain about that at all. I could not swear to any such thing.

Q. When was that receipt you spoke of this morning made?

A. I don't remember the date.

Q. You say there was no sale of the goods at your store?

A. What I meant by a sale was it was not invoiced and sold out to them the same as I would sell out to anybody else, but in order to keep the store running along and not close it up and sell out by sheriff's sale they proposed to take the goods just as they were for the amount of money due them on this judgment they had against me.

(Judge RAND:)

38 Q. Because they could make more out of the goods selling them that way than they could by sheriff's sale?

A. Yes, sir.

(Mr. SPEED:)

Q. Did Mrs. Knight or Fletcher & Churchman or anybody for them look at the goods or estimate them in any way?

A. Mr. Churchman was down there and looked at them.

Q. There was no inventory taken of them?

A. Not at that time. We had invoiced the goods in January, and we had bought about as many goods from January up to the time they took the store, very nearly as many as we had sold, so it left the store pretty much the same.

Q. After the sale was made was there ever any inventory taken?

A. There was an inventory taken of the goods when Mr. Churchman and Mrs. Knight dissolved partnership, which, I think, was on August 12, 1879.

Q. Did that inventory show the invoice price?

A. Yes, sir; and the different kinds of goods. The object of that was Churchman was dissatisfied with the way the business was running; thought it was not being closed out as fast as it should be, and he did not want to be interested in it; he wanted to get out of it. The understanding was when they took the concern that the stock was to be closed out as fast as possible, and we were doing the best we could; still we had to be buying goods all the time in order to keep up the stock so it could be sold. When we run out of one kind of goods, a staple article, we could not sell other articles without that staple article, and the invoice was taken to divide the goods.

Q. How were the goods appraised as to their value at this time, August 12, 1879?

A. Cost and carriage.

Q. How could you determine the cost and carriage?

A. By invoices.

Q. Did your goods all have marks on them showing from whom they came?

A. No, sir; but we could always tell as a general thing where they came from.

Q. Could you tell whether you had any goods in that invoice of August 12, 1879, that came from Byers?

A. If we had any of Byer's goods in there we could, I think.

Q. Were his goods principally different from those of such firms as Spang, Chalfant & Co.?

A. Yes, sir.

Q. Could you tell the 12th day of August whether any goods originally bought from Pliny Jewell & Sons were in that stock?

A. I think there was a few goods in there bought from them—probably $50 worth.

Q. Could you tell whether there were any of the goods in there which had been bought from Spang, Chalfant & Co.?

A. I could if any were there, but I don't think there were any goods belonging to them in the store on the 12th of August, 1879.

By Judge RAND: What do you mean by "belonging to them?"

A. I mean bought from them.

By Mr. SPEED: What became of the goods you bought in April, 1879, from Spang, Chalfant & Co. to the amount of $849, as your books show?

A. Sold out to different parties.

Q. At what time were they sold before the 1st of May?

39 A. I think probably they were sold by the 1st of May—bought at that time.

Q. How did you come to make this agreement with Fletcher & Churchman and Mrs. Knight that they were to receive the goods in satisfaction of your debts to them?

A. That was all I had, and they wanted to be secured. They took all I had there as payment. Of course I could not give them any more.

Q. How did they take it—did not you offer it to them?

A. No, sir; they demanded it.

Q. When did they demand it?

A. Churchman demanded it of me in his office, and Mrs. Knight made a demand in this way: If Churchman took judgment against me she also would take judgment.

Q. She had already taken judgment, had she not?

A. I don't know whether I am getting ahead of my story or you. You asked me how they came to take the goods.

Q. Exactly.

A. They took them after they took the judgment.

Q. When did Mrs. Knight demand the goods?

A. At the same time Churchman did.

Q. Were they together at that time?

A. I could not say.

Q. You cannot remember, then, where she demanded them?

A. She demanded them about the time Churchman did, and I presume she demanded the goods of me up at the house or at Ayres' office.

Q. She did not make a demand at the same time and in the presence of Churchman, then?

A. I could not tell you whether she did or not.

Q. What is your best judgment in regard to that?

A. She was down at Churchman's office, I think, about the time the demand was made by Churchman that I must secure him in some shape or other.

By Judge RAND: Did not they take the goods because they thought they would get more that way than any other?

A. Yes, sir.

By Mr. SPEED: Where were Mrs. Knight and Mr. Churchman at the time they signed the receipt for the goods you have spoken of?

A. I think Churchman signed it in his office, and I think Ayres took the paper up to my house and Mrs. Knight signed it there.

Q. There was an agreement, then, that the receipt should be given before it was signed, was there not?

A. My best recollection is it was a receipt for the goods that were turned over to them in full consideration and payment of the claims they had against me.

Q. There was an agreement for that receipt before it was made?

A. I don't know as there was any agreement at all.

Q. They demanded it of you and you told them you would give them your goods for the debt?

A. They made a demand for the goods. They pressed me several times to pay those notes.

Q. Can you remember anything at all certainly about what happened after this judgment was taken before that receipt was drawn up?

A. The judgment was taken and execution held a day or two before they took the property.

Q. Who directed that execution to be held?

40 A. I don't know but what I asked them to hold it a day or two to see if I could not make some arrangement so as not to have the store taken from me—so I could carry it along myself. I did not know but what I could make some arrangement so I could bridge over and get along.

Q. How soon after seeing Bissell did you tell Churchman to go ahead and take his judgment?

A. I don't know whether it was right away after I saw Bissell or how long it was afterwards; Bissell may have the dates, because he notes down the days he is here, most likely.

Q. You cannot remember what time in April you saw Bissell?

A. No, sir; I cannot.

Q. Or what time in April you told Churchman to go ahead and take that judgment?

A. No, sir.

Q. Did you tell Churchman to go ahead and take judgment, or did you tell Ayres?

A. I tried to get him to hold off as long as he possibly could and not take judgment, in hopes I could do something and save the store. He held off as long as he could, and finally told me he would

have to go ahead and take judgment. Said I, "Go ahead, then, and take it." When he said he must take it I thought there was no use waiting any longer.

Q. The cognovit was held six weeks?

A. I know it was.

Q. You got him to hold off six weeks, then?

A. I don't know whether it was six weeks or not.

Q. It was from the 17th of March to the 1st of May?

A. Yes, sir.

Q. How long was it from the time you told Churchman to take his judgment until the 1st of May?

A. I don't think it was more than a day or two.

Q. It was, then, not earlier than the 29th or 30th of April that you had your interview with Bissell?

A. I could not tell you what time I had my interview with Bissell; I do not remember whether it was in March or April; it might have been in March or it might have been in April.

Q. You stated this morning that you knew as soon as you talked to Bissell this last time that you could not go on in your business because he was going to take personal judgment, which would take everything you had, and thereupon you went and saw Churchman and told him to take his judgment?

A. This cognovit, I think, was given at that time?

Q. Do you still adhere to the statement you made this morning—that when you saw Bissell the last time, after you saw him, and he refused to take that property for his debt, you knew then that you could not go on in business?

A. Not unless I could make some arrangement to go ahead.

Q. Did you go to anybody to see if you could get means to go on?

A. I do not think I did.

Q. You did not go to anybody, then, to get help after you saw Bissell?

A. I don't think I did.

Q. The time when you saw Bissell the last time was before the 1st of May, 1879, was it not?

A. Yes, sir.

Q. You knew at the time you saw Bissell, then, that you could not go on in business after he gave you that answer, did you not?

41 A. I don't know but what that is correct, if I said so. I don't remember saying so, though.

Q. What is the fact, as you remember it now?

A. I tell you I was in hopes I could bridge over and get along; that perhaps Bissell might relent and take the building and not take my personal property. He had plenty in the building to pay him out.

Q. What was the amount of your personal property May 1, 1879?

A. I thought it was worth somewhere in the neighborhood of $20,000, but it was not. It was between $5,000 and $6,000 short. The inventory made at the time the stock was divided between Mrs.

Knight and Mr. Churchman, on the 12th of August, 1879, I think amounted to fourteen thousand and some odd dollars.

Q. What book accounts had you which were due you from other persons on the 1st of May, 1879?

A. I think there was between five and six thousand dollars.

Q. What became of them?

A. I made an assignment of these. I assigned somewhere in the neighborhood of $1,300 worth to Horace Parrott and the rest to the Cully estate. I was guardian for the Cully heirs. I had their money in my possession and had used it, and I assigned these accounts to the Cully estate and collected them. There was another guardian appointed, and I paid the money over to him.

Q. Then the amount of accounts you assigned to the Cully estate was about $4,700?

A. No, sir; the balance was not all assigned to that estate. I assigned about $1,300 of accounts to Jillson.

Q. That would have been $3,400 you assigned to the Cully estate?

A. No, sir; I don't think there was that much.

(By Judge RAND:)

Q. When was this assignment of these accounts made; was it before or after the sale of these goods?

A. It was before.

Q. How long before?

A. I could not tell you how many days.

(By the MASTER:)

Q. Did a single act cover them all or were they assigned separately, at different times?

A. Different assignments. They were all done in a day or two of each other, as fast as the accounts could be made out and assigned to the different parties I was indebted to.

(By Mr. SPEED:)

Q. How much of these accounts did you assign to the Cully estate?

A. Two thousand and some odd dollars, to the best of my recollection.

Q. The accounts which you assigned to Parrott, Jillson, and the Cully estate covered all your accounts which you owned at that time?

A. Yes, sir.

Q. Did you own any checks, notes, or drafts?

A. Not that I know of. If I had any notes they were assigned with the accounts to these different parties. These assignments included accounts and notes.

Q. This $5,000 included your accounts, notes, checks, and drafts of every sort?

A. I think it did, to the best of my recollection.

Q. You say they were assigned before the sale. About what time were they assigned—the day before or two days before?

A. I cannot remember whether they were the same day or not, or whether they were the day after or the day before. I think, probably, the books would show.

Q. How were those accounts assigned?

42 A. There was an original assignment made.

Q. An account was made and assigned in writing?

A. Yes, sir.

Q. Your books don't show that those assignments of the different accounts were made?

A. We had a book with the assignments in. I don't think it is in the ledger.

Q. Was notification sent to your different debtors that you had made these assignments?

(Objected to as being immaterial.)

A. I think there were notices sent to them to pay different parties; that these were assigned to Parrott, Jillson and others they were owing to.

Q. The property which you turned over to Mrs. Knight and Fletcher & Churchman was turned over, you say, in full payment of your indebtedness to them?

A. That was the arrangement at that time.

Q. Did they give up to you any evidences of indebtedness at that time, any notes which they held against you on the first or third of May, 1879?

A. I cannot say whether it was on the first or third of May. What I considered was that receipt they made to me at the time they took that property. They signed the receipt for value received.

Q. You remained in possession of those goods as their agent, did you not?

A. Fletcher & Churchman and Mrs. Knight put me in there as their agent.

Q. When did you go into possession as such agent?

A. It was the day they took the store. I think it was on the 3d of May.

Q. What was your arrangement with them in regard to being their agent?

A. Mr. Churchman put me in there as his agent and asked me to sell the goods out as fast as possible and close up the store. That was the arrangement he made with me.

Q. Did you arrange you should have any pay as agent?

A. There was nothing in particular said about that. I was to do it as cheaply as I possibly could and wind the thing up as fast as possible.

Q. You had no arrangement for a salary, then, at all?

A. No, sir.

Q. What salary did you get?

A. I had from $10 to $15 per week.

Q. That was not in pursuance of any agreement between you?

A. No, sir; there was no agreement with me about the salary I should receive.

Q. Did that come equally out of Mrs. Knight's and Fletcher & Churchman's share of the goods?

A. I think it did. They had to foot the bills. I did the work as cheaply as I possibly could.

Q. Why should you continue as agent for Fletcher & Churchman, working as cheap as you possibly could, after you had paid your debt to him?

A. I was looking after my wife's interest.

Q. How did it help your wife's interest to look after Fletcher & Churchman's interests?

A. I was looking after my wife's at the same time.

Q. You were not looking after Fletcher & Churchman's at all?

A. I was looking after their interests too. They had accommodated me a great many times, and I was trying to repay them in some way or other.

Q. You had already repaid them?

43 A. I know I had paid them, but there might be a little friendship existing yet.

Q. You did it out of friendly regard?

A. I got my pay, too, $10 or $15 per week; sometimes $10, and sometimes $15; there was no sum stated at all.

Q. Was there any understanding when you got the receipt from them and turned over the goods to them that you should take care of Mrs. Knight's property there?

A. Not when the receipt was given there was not. I was put in there as agent after that receipt was given. I turned the property into their hands and they put me in as agent.

Q. Mrs. Knight and Mr. Churchman formed a partnership before they appointed you agent?

A. Yes, sir.

Q. They proposed to run the business without you before they appointed you agent?

A. They did not run it long—not more than a day.

Q. What was your understanding?

A. My understanding was that the business was to be run to close it out as fast as possible.

Q. Was it your understanding you were to close it out?

A. Yes, sir.

Q. Was that before the receipt was given?

A. No, sir; after the receipt was given.

Q. What was your understanding before the receipt was given as to closing it out?

A. There was no understanding about it.

Q. Was it any part of your understanding or inducement to you to give them the goods upon their receipting their claims against you that you wanted to keep that business going which you had carried on so long?

A. No, sir; it was not.

Q. You stated a little while ago, I believe, that that receipt cancelled your indebtedness to Mrs. Knight and Fletcher & Churchman.

A. I so understood it at the time, that they took the goods in payment of what I owed them.

Q. Have you understood it any different since then?

A. When the goods were divided and an inventory taken of them and the amount footed up it fell considerably short of the amount I owed them. Churchman did not feel satisfied and asked me to give him a note for the balance due him, $2,800, which I did; there was not sufficient goods there to pay him out and I gave him a note for the same as I gave all the balance of my creditors notes; the reason I gave him a note was I told him I supposed there was goods enough in the store to pay him and Mrs. Knight, but when the goods were inventoried in August there was not enough, and of course it was a lack of judgment on my part.

Q. Did not they look at the goods?

A. They did, but they had no way of determining the value of the goods; nobody could have come in there and by simply looking at the goods tell what they were worth.

Q. They could have inventoried them?

A. They could, I suppose, but they did not.

Q. That note was for the difference between the inventory and the $10,000 you owed Churchman?

A. Yes, sir. I wanted to make Churchman whole the same as the rest of my creditors. I have no disposition to cheat my creditors out of a nickel.

Q. Were you manufacturing at the store from the 1st of May to the 12th of August?

44 A. We never did manufacture, we just sold goods.

Q. Did you know on the 1st of May what the invoice price of goods was?

A. I did not, only from a rough guess and from the inventory we had taken the January previous.

Q. During the two days that execution was held, then, did you not have interest enough in those goods to go and take an inventory?

A. We could not have inventoried them in two days. I asked them to hold that execution.

Q. And when they gave you a receipt for the money you turned them over the goods?

A. I presume that is it.

Q. That is the best of your memory?

A. They made a demand, and of course I had to comply with it.

Q. How near the invoice price did you sell what goods you sold between the 1st of May and the 12th of August, 1879?

A. We tried to get from ten to fifteen per cent. profit; sometimes twenty per cent., sometimes twenty-five per cent.

Q. What would be the average profit you actually made on those goods?

A. It is hard to tell. It might have been fifteen per cent.

Q. Did that fifteen per cent. pay the moving expenses of that establishment?

A. Yes, sir.

Q. Did it pay anything beyond that?
A. I think it ought to.
Q. How much?
A. I could not tell you.
Q. Probably five per cent.?
A. Yes, sir.
Q. You say you sold goods to the amount of $5,156 between the 3d of May and the 12th of August?
A. About that.
Q. And there was a clear profit of five per cent on these goods?
A. Yes, sir.

Adjourned until 10 o'clock a. m.

WEDNESDAY, *January* 19, 1882—10 o'clock a. m.

Parties met pursuant to adjournment.
Present: W. P. Fishback, master; Horace Speed, Esq., attorney for plaintiffs; Judge Rand and Ferd. Winter, Esq., attorneys for defendants.

Direct examination of JOHN KNIGHT continued by Mr. SPEED:

Q. On or about the 14th day of April, 1879, did you accept a draft drawn on you by Pliny, Jewell & Sons, plaintiffs in this action, dated February 2, 1879, and payable six months after that date, for $379.36?
A. I believe I did.
Q. Was that draft for goods and merchandise they had sold you?
A. Yes, sir.
Q. About what time had they sold you these goods?
A. (Referring to ledger.) The goods were bought February 19, 1879.
Q. In the month of October, 1879, did not you purchase of the same firm goods?

Objected to as irrelevant, because it is six months after the date in controversy.

A. I was not in business on my own account at that time, and know of no such purchase.
45 Q. If it was made in your name it was not by your authority?
A. Jillson had authority to go on and do business while I was away from here, in the name of John Knight, agent.
Q. But not in your own name?
A. No, sir.
Q. Mrs. Knight is your wife, I believe?
A. Yes, sir.
Q. What interest did you pay on your loans—to Fletcher & Churchman?
A. Ten per cent.

Q. How was that ten per cent. paid?

A. Out of the store.

Q. Exactly, but when you obtained a loan from them did they deduct the ten per cent. then or did you pay them the ten per cent. when the note matured?

Objected to as irrelevant and incompetent. Question withdrawn.

Q. Have you been able yet to find what was the amount of your indebtedness on the 17th of March, 1879, for goods?

A. Not exactly, but it was somewhere in the neighborhood of $8,000 or $9,000; probably a little less than that.

Q. As I figure up your unsecured indebtedness on the 17th of March, 1879, it was: To Fletcher & Churchman a little over $10,000; to Mrs. Knight a little over $10,000; to merchandise account, about $8,000 or $9,000; to Jillson, Parrott, and the Cully estate, about $5,000. Is that correct?

A. That is very near the figures, I believe.

Q. How much of your merchandise debts were not due on the 17th of March, 1879?

A. Some of them did not come due for a few weeks. I could not tell you how long it was, as I have not looked over the accounts at all to find out.

Q. Can you give the amount of your merchandise sales in 1878?

A. No, sir; I cannot.

Q. Did you take any invoice?

A. Yes, sir.

Q. Will not your ledger show the amount of your sales?

A. I would not be in the ledger.

Q. About what was the amount of your merchandise sales in 1878?

Objected to as immaterial, irrelevant, and incompetent.

A. I should say there was between $75,000 and $80,000 worth of goods sold in 1878.

Q. You are asked in the 24th interrogatory in the bill if, on May 3d, you did not write to Spang, Chalfant & Co. as to your condition? I now hand you a letter and ask you if you did not send that letter to them?

A. I signed this letter, Mr. Jillson wrote it.

Complainant's counsel offers in evidence and reads to the master a letter identified by the witness, dated —— —, which said letter is hereto attached, marked "Exhibit 1."

Q. Did you understand at the time you wrote that letter that a judgment of foreclosure would carry a judgment against you personally for $45,000, as the letter states?

A. When that letter was written I supposed I was personally liable for it.

By Judge RAND: You bought the property at Sheriff's sale and paid the amount of the bid?

A. Yes, sir.

46 By Mr. SPEED: How long had you been keeping your deposit account with Fletcher & Churchman's Bank on March 2, 1879?

A. My business account had been kept there for ten years. I did all my banking business there.

Q. Were the notes you gave for goods purchased commonly made payable at that bank?

A. Some were made payable at Fletcher's and some at the First National, and different banks around town. I do not know that they were made payable any more in one bank than another. Sometimes they would send their notes to Fletcher & Sharpe's. I would make notes to the parties I bought goods of and they would send them back to the different banks.

Q. What blanks did you use in filling the notes?

A. Most of the time when I was making a note for these parties I would fill it out on Fletcher & Churchman's blank, but sometimes they sent notes out from the East on their own blanks and I would sign them.

Q. What notes due in April and payable at Fletcher & Churchman's Bank were unpaid and protested?

A. I don't know whether there were any or not.

Q. What did Fletcher & Churchman do with the goods they took on August 12, 1879?

A. They removed them from the store and stored them in one or two different places.

Q. What eventually became of them?

A. Jillson bought some of them back as he wanted them. I, as Mrs. Knight's agent, instructed him to buy goods wherever he could get them the cheapest and best when I was away from the city.

Q. What amount of those goods did Jillson buy back in that way?

A. I don't know the amount; maybe $2,000 worth.

By Judge RAND: State what you know.

A. I don't know the amount.

By Mr. SPEED: Did you buy any of those goods yourself for Mrs. Knight, acting as her agent?

A. I did not.

Q. What became of the rest of those goods?

A. I think Churchman sold them to the gas company.

Q. What become of the goods Mrs. Knight took?

A. They were sold out of the store to different parties in the regular course of business.

Q. After August 12, 1879, you continued in business at the same place for her?

A. Yes, sir.

Q. Your name in business was John Knight, agent, was it?

A. Yes, sir.

Q. Your bill-heads and letter-heads showed that?

A. Yes, sir.

Q. Did they show for whom you were agent?

A. No; I don't know as they did.

Q. Did not they show you were agent for goods of the National Tube Works?

A. They also showed that I was agent for Mrs. Knight, and also for the National Tube Works, selling their goods at that time.

Q. Your advertisement and bill-heads, however, only showed that you were agent for the goods of the National Tube Works.

A. I never advertised in that way.

(By the MASTER:)

Q. Does it mention Mrs. Knight's name?

47 A. I don't know as the advertisement mentions Mrs Knight's name.

(JUDGE RAND:) The best evidence is the letter-heads and advertisements themselves.

The WITNESS: I also signed receipts and checks Jno. Knight, agent.

(JUDGE RAND:) Hold on; the best evidence is the documents themselves.

(By Mr. SPEED:)

Q. You stated yesterday that you understood that on the foreclosure of the mortgage the personal property would be first taken to pay the debt?

A. I did.

Q. Whom did you get that information from?

A. I could not tell you; I have always believed that myself.

Q. Did you ever inquire of your attorneys about that?

A. I could not say positive whether I have or not.

Q. When Churchman and Mrs. Knight asked you for security, about the 2d of March, did they ask you for any particular kind of security on their debts?

A. No; I don't know as they asked me for any particular kind of security; they wanted to be secured.

Q. Did they ask for any particular kind of security on the 17th of March?

A. Mr. Churchman requested I should make him out this cognovit or have it made out.

Q. Why did he want a cognovit instead of a chattel mortgage or some other security?

A. I don't know why he wanted that, but he wanted a cognovit so he could take judgment before George P. Bissell could take judgment.

Q. Would not a chattel mortgage have covered your property?

A. I don't know anything about that.

Q. Did not you understand at that time if you gave a cognovit and continued buying goods on credit that when that cognovit was levied it would cover the goods not paid for which you bought after you made the cognovit?

A. Not until the judgment was levied on the goods.

Q. Exactly; but at any time Churchman could levy the execu-

tion under that cognovit on any unpaid goods you had bought after the cognovit was made, could he not?

A. He could have levied on the goods at any time after the cognovit was put into his hands, I suppose, and taken judgment. That was the understanding. I don't think there was very many goods bought from the time that cognovit was given to Churchman until he levied. There was one car-load of pipe came here from Byers a day or two before Mrs. Knight and Mr. Churchman took the concern, and I telegraphed them to come and take care of their pipe; that I would not take it into the house.

Q. That was a day or two before the judgment was confessed?

A. Yes, sir.

Q. Why did you telegraph them at that time?

A. Because I was pretty well satisfied they were going to take a judgment, and I did not want their goods to come into the house and be taken in that way.

Q. What caused you to suppose there was going to be a judgment taken then?

A. I can only say that they told me they were going to take a judgment against me.

Q. When did they tell you that?

A. I don't know the date. They told me some time between
48 the time the cognovit was got out and the 3d or 4th of May; whatever time it was when they took the judgment.

Q. Was it within a week after you gave them the cognovit?

A. I could not tell you.

Q. Do you know it was two days before they took the judgment?

A. I think it was as much as that. I don't think there were any goods bought or taken into the house a week before they took the judgment, because they told me they were going to take a judgment against me, and I did not want to take goods into the house.

Q. (Interrupting.) You don't mean to say they told you a week before the judgment was taken?

A. I don't know whether it was a week or two or three days; it was some little time.

Q. Is it not a fact that you gave this cognovit instead of a chattel mortgage because you were then in good credit and wanted to retain your credit on the 17th day of March?

A. Of course any man in business wants to maintain his credit, but I gave the cognovit because Churchman requested me to give it to him, and my credit at that time, of course, I wanted to keep as well as I could. No one ever said a word to me about a chattel mortgage. Churchman demanded a cognovit, and it was made out for him.

Q. There was no agreement, then, when you gave this note of $10,000, on March 2d, that you should give Churchman any other security?

A. I don't think there was any additional security at that time?

Q. What additional security did you give him about that time?

A. I don't remember the time exactly, whether it was about that time or not.

Q. What additional security did you assign to him for this $10,000 debt, then?

A. I had a judgment against the Indianapolis Railway and Supply Company; I assigned that judgment to Churchman.

Q. For how much was that?

A. I think it was $6,000.

Q. Did you owe him more than $10,000 at that time, March 2d?

A. No, sir. I don't know whether I made the assignment of that judgment until after division of the stock between Mrs. Knight and Mr. Churchman, on August 12, 1879, or not. It may have been before that time; I think probably it was.

Q. About what time did you assign him that $6,000 judgment?

A. I don't remember the time.

Q. You say you took an inventory of your goods on the 1st of January, 1879?

A. Yes, sir.

Q. How much did that inventory show?

A. I think it showed somewhere in the neighborhood of $16,000, if I remember right.

Q. By that inventory and the amount of your purchases and sales up to the first of May, 1879, did not you know very well about the amount of goods you had on hand?

A. I don't know but what it amounted to more than $16,000; I would not be positive. I have not looked at that since the invoice was taken.

Q. Whatever the invoice was, could not you tell from that
49 invoice about the amount of your purchases and sales up to the 1st of May and the amount of goods you had on hand?

A. Sometimes we bought more goods in a month than we sold. Sometimes it was under, and I don't know that the books would show, from month to month, the condition of the stock. They might —, if they were balanced, the amount of goods brought into the shop, the amount of goods sold, and what was received for them.

Cross-examination by Judge RAND, counsel for defendants, Fletcher & Churchman:

Q. You say on the 2d day of March, 1879, Fletcher & Churchman and your wife wanted security for what you owed them. Is that true or not?

A. I don't remember whether it was on the 2d of March or the 17th of March. I think it was on the 17th of March.

Q. When you gave Churchman the note for $10,000, dated March 2, 1879, did not he say he wanted security for his debt?

A. Yes, sir; he wanted some kind of security to make him safe.

Q. And you gave him that note, due one day after date?

A. Yes, sir.

Q. So he could proceed to collect it if he wanted to.

A. Yes, sir.

Q. You owed that much money, didn't you?

A. I did.

Q. An honest debt?

A. It was.

Q. And he took no steps until the 17th of March?

A. No, sir.

Q. Then you say he and your wife wanted a cognovit to secure their debts so they could take a confession of judgment whenever they wanted to?

A. Yes, sir.

Q. Did not you tell them you thought you would be able to arrange your business so you would be able to go on and they would be safe?

A. I did.

Q. After you gave that cognovit you continued on the business in about the same way you had been going—expecting you would arrange things—until about May 1, 1879?

A. Yes, sir.

Q. But along in the latter part of April you had an interview with Mr. Bissell, when he finally determined he would not consent to take the mortgaged property to secure his mortgage debt?

A. That is it exactly, but I do not know whether it was in the latter part of April or not.

Q. It was a few days before the judgment was taken?

A. I think it was.

Q. Did not you tell Churchman you had failed to get Bissell to take the mortgaged property for his debt?

A. Yes, sir.

Q. Then he told you he was going to take a judgment?

A. He did.

Q. And he did take a judgment and execution was issued?

A. Yes, sir.

Q. Up to the time he took the judgment had not you requested him to hold off, hoping still that you could arrange your debts?

A. I did. I did everything in my power.

50 Q. If you had succeeded in arranging your indebtedness with Bissell, could not you have succeeded in arranging the balance?

A. I think I could, easily.

Q. After the execution was issued, did not you and Mrs. Knight, or her attorney, and Mr. Churchman talk it over, whether it would not be sacrificing the goods to sell them at sheriff's sale, and they would not be able to make as much out of them as they would to buy the goods?

A. Yes, sir; that was the conclusion they came to.

Q. Then, did not they propose to buy out the stock of goods from you and take them in satisfaction of their judgment?

A. Yes, sir.

Q. What did you say to them as to the amount of goods you thought you had there?

A. I told them I thought I had somewhere in the neighborhood of $20,000.

Q. And they said they would take the goods in satisfaction of the debt, and you delivered them over to them?

A. Yes, sir.
Q. And they took possession of the store and goods?
A. Mr. Churchman went down there and took possession himself.
Q. Then, did not they employ you to sell out those goods as fast as you could in the market on that day or the next?
A. Yes, sir.
Q. And did not you as agent commence selling them out?
A. I did.
Q. As you went along in selling them, did not you find it was necessary to supply some things to sell the others?
A. I did.
Q. And did not you supply them by their direction and on their credit?
A. Yes, sir.
Q. And when you were trying to buy the goods, did not the parties from whom you were trying to buy for your wife and Mr. Churchman inquire whether the concern was good or not to you?
A. Yes, sir; and they were referred to Mr. Churchman.
Q. He satisfied them and you got the goods?
A. Yes, sir.
Q. You only bought enough to keep up the assortment so you could close out the concern as soon as possible?
A. Yes, sir.
Q. You run it for them from the 3d of May till the 12th of August?
A. Yes, sir.
Q. Then Churchman was not satisfied with the way you were disposing of the goods; he wanted to dispose of them faster to close out?
A. That is right.
Q. Then did not he and your wife offer to divide the goods?
A. Yes, sir; and did so on equal division.
Q. You had realized over and above the expenses and what you had paid out for goods in the neighborhood of $5,156?
A. Yes, sir.
Q. That money was divided between Churchman and your wife, was it not?
51 A. Yes, sir.
Q. And the goods were divided also?
A. Yes, sir.
Q. And the goods invoiced on the 12th of August, about $14,000?
A. Between $14,000 and $15,000, the accounts and goods together.
Q. The invoice of goods then was only some $9,000?
A. Yes, sir.
Q. And the cash added to it made it up to $14,000 and something?
A. Yes, sir; after deducting the running expenses of the store.
Q. Your wife got half and Fletcher & Churchman got half?
A. Yes, sir.
Q. When that was settled up it did not pay Churchman's judgment?

A. No, sir.

Q. And, if I understand you right, he told you you had represented there was that amount of goods there, enough to pay him and your wife, and it had failed, and he wanted you to give your note for the balance?

A. Yes, sir.

Q. Did you owe your wife the $10,000 for which she held your note?

A. As much us I owed Churchman—$10,000; it was for borrowed money.

Q. Did you make the sale of goods to them on the 3d of May, 1879, and put them into their possession with the view of paying off those two debts?

A. I did.

Q. And did you not do it in good faith, without any intention to defraud, injure, or delay any other creditor?

A. I did, most undoubtedly.

Q. You did it for the purpose of giving them whatever preference the law allowed you to give them in securing their debt?

A. Yes, sir.

Q. I understand you to say that you were in hopes clear up to the last-named date you would be able to bridge over your difficulties and go on?

A. I was.

Q. You requested Churchman to hold off and not take a judgment as long as he could, and when he found out you had failed with Bissell then he told you he was going to take a judgment?

A. That is it exactly; I testified to that yesterday.

Q. Did you give the cognovit in order that he might hold it until you bought other goods and put them in the store that he might levy on them?

A. No, sir.

Q. I will ask you if you did not pay more debts during that time than you bought goods—did not sell more goods than you bought from the time you gave the cognovit, on the 17th of March, up to the 3d of May?

A. Yes, sir; there were more goods sold out of the store than there were bought.

Q. How long does it take goods to come from Pittsburgh here by freight?

A. If not delayed on the road, it takes them three or four days to get here after the bill of lading is made out.

Q. How long from New York?

A. Eight or ten days after they are shipped on the fast freight lines?

52 Q. How did Spang, Chalfant & Co.'s goods come?

A. By freight.

Q. Did you keep on paying your debts right along after the cognovit was given up to the 3d of May as fast as the money came in from sales?

A. Yes, sir.

Q. You did not pay Fletcher & Churchman, did you?
A. Not that I remember of.
Q. Did you pay your wife anything between those times?
A. No, sir.
Q. All the money you got during that time was used in paying your mercantile debts?
A. Yes, sir.
Q. The unsecured debts?
A. Yes, sir.
Q. The same as you had been doing before?
A. Exactly; and I made a greater effort to pay them off than at any other time.
Q. Was there any understanding between you and Churchman and your wife that you were to keep this cognovit concealed?
A. No, sir; it was not concealed.
Q. Was there any understanding between you and Fletcher & Churchman or your wife that you were to go on buying goods and put them into the store so they could take judgment and levy on them?
A. No, sir.

Cross-examination by Mr. WINTER, counsel for Mrs. KNIGHT, defendant:

Q. When was this lot that was mortgaged by your wife to borrow the $10,000 she loaned to you first purchased by her?
A. I think it was in 1869.
Q. It was not improved at that time, as I understand you, except there was an old church on it?
A. That was all.
Q. How was that lot paid for?
A. In payments.
Q. What did you pay for it?
A. Money.
Q. Where did the money come from?
A. Part from the store and part from a lot Mrs. Knight owned on Delaware street.
Q. How long had she owned that lot?
A. Eight or nine years.
Q. How much of the money paid for this lot came from the lot on Delaware street Mrs. Knight owned before?
A. Six thousand dollars I believe went into that property from the lot on Delaware street.
Q. Did any of it go into the residence that was built on the lot afterwards?
A. Yes, sir.
Q. To whom was that lot conveyed when it was purchased in 1869?
A. To Eliza J. Knight.
Q. At that time what was your condition as to being solvent or insolvent?

A. I thought I was worth $80,000 to $100,000, and $60,000 outside of that property.

Q. How was the $10,000 your wife loaned to you procured by her?

A. By a loan from a man named Reese.

Q. How did she secure that loan?

A. By mortgaging her house and lot up there.

53 Q. How much money did she get in the first place?

A. Nine thousand six hundred dollars. That was the proceeds of the $10,000 loan, less the commission.

Q. What was done with that money when she got it?

A. She loaned it to me and I gave her a note for $10,000.

Q. In whose possession did that note remain after you gave it to her?

A. In her possession.

Q. What was the date of that mortgage and note?

A. Dec. 21, 1878, I think.

Q. State whether or not the amount of that note was entered on your business book.

A. Yes, sir; and carried there as a part of my indebtedness.

Q. What was done with the money you got from you wife for which that note was given?

A. It was deposited in Fletcher's Bank, and I drew on it to pay off bills when they became due for goods used in the store.

Q. Part of these goods were on hand yet at the time you transferred your property to your wife and Fletcher & Churchman, were they not?

A. I do not know whether any were there or not.

Q. When was it your wife first spoke of wanting security for that money?

A. When I told her Churchman was uneasy and wanted to be secured. I told her about Churchman demanding a cognovit to secure his $10,000, and she insisted then that she should be included in that cognovit.

Q. Why did she desire to be included in that cognovit?

A. Because she wished to be made secure, the same as Churchman, on the same ground.

Q. Did not she desire to be included in that same cognovit with Churchman so no judgment could be taken by Churchman which did not include her?

A. Yes, sir; she wanted to be equal with Churchman.

Q. The cognovit was given to her and Churchman on their request jointly for both amounts?

A. Yes, sir.

Q. Had you made any payment whatever to Mrs. Knight on account of this $10,000 prior to the third day of May, 1879, when you turned over the property to her and Mr. Churchman?

A. No, sir; none whatever.

Q. Had she any security for it at all?

A. No security only the note.

Q. You stated you transferred a judgment you had against the

Indianapolis Railway and Supply company for $6,000 to Churchman; state what value, if any, there was to that judgment.

A. I did not think it was worth anything. The company had gone into bankruptcy and the suit is pending yet, I believe.

Q. Was there any other security for that debt outside of the judgment against the Indianapolis Railway and Supply Company? Was any other person liable for it, as you understood, at that time?

A. No, sir.

Q. Had you no action or claim against anybody else on account of that debt? Was not there a liability for that same debt against L. M. Rumsey & Co., of St. Louis?

A. There was.

Q. Is there an action pending against them now on account of it?

54 A. There is, but nothing has been realized from that debt yet, nor is it known that anything will be.

Q. State how Mr. Churchman holds that Rumsey claim?

A. Just as security on that note of twenty-eight hundred and odd dollars, and he did not consider it as very much security either.

Q. Who was it that mentioned first the subject of being secured between you and Churchman?

A. Churchman.

Q. And who spoke first of the cognovit?

A. Churchman.

Questions by Judge RAND:

Q. Look at the paper now shown you and state how many goods you purchased from the 17th of March, 1879, to the 3rd of May, 1879?

A. Four thousand one hundred and thirteen dollars and ninety-four cents.

Q. How much did you sell during that same time out of the store?

A. (Witness referring to paper.) Five thousand two hundred and forty-nine dollars and sixty-seven cents; that is what we paid out from the store during that time.

Q. What were the cash receipts during that time?

A. Five thousand two hundred and fifty-three dollars and thirty-one cents.

Q. Did not you pay this $5,249.67 out to your creditors in connection with your store?

A. Yes, sir.

Q. And all unsecured creditors?

A. Yes, sir.

Q. And there was not any of that sum paid on any of the debts that were secured?

A. No, sir.

Q. I understood you to say that up until the very last you thought you would be able to arrange with Bissell and bridge over and carry on your business as you always had done?

A. I did.

Q. You stated yesterday you thought that Churchman knew you were buying goods on credit. Do you know of his having any knowledge of your buying goods on credit after you gave the cognovit?

A. If there were any goods bought from the time he got the cognovit until the time when he got the store he would know from the checks coming in through the clearing-house whether I was buying goods or not?

Q. Do you suppose he knows of every check that comes into the bank?

A. No, sir; I don't think he does.

Q. Did you ever tell him you were buying goods on credit from the 17th of March to the 3d of May?

A. No, sir; I don't think I told him anything about it.

Q. Did you ever give him any information, or tell him how you were conducting the store from the 17th of March to the 3d of May?

A. No, sir.

Q. Did you pay cash for a good many of the goods you bought from the 17th of March to the 3d of May?

A. I don't know but what there was some cash paid for them; we always had to pay a little cash, and buying of certain persons we have to pay cash, but we hardly ever bought much of those parties. There is a certain kind of goods we have to pay cash for, but the general run of the goods were bought on time and are yet; during
55 that time we simply bought enough goods to keep a sufficient supply to go on with the business, and we collected in as fast as we could and paid the money out; I think the papers will show there was money paid right up to the day they took the judgment, or within a day or two.

Question by Mr. WINTER:

Q. Did you ever say anything to your wife, from March 17 to May 3d, that you were buying goods on credit at the store?

A. No, sir; I don't think I ever said a word to her about it.

Redirect examination by Mr. SPEED:

Q. These papers which have been shown me by Judge Rand, marked Exhibits 2 and 3, were made up by Mr. Jillson, at the request of Fletcher & Churchman, in order that they could answer the interrogatories propounded to them when they filed their answer. The papers for the last two days have been in Judge Rand's hands, I think.

A. When you asked me yesterday in regard to the purchases I could have told you from these papers, but I did not have them. I knew they had been made up and were in the possession of some of the attorneys, but I did not know whether you had them or Judge Rand had them. This paper marked "Exhibit 2," showing the purchases from March 17th to May 3, 1879, is correct, I think. I do not think there were any goods bought after Fletcher & Churchman told me they were going to take a judgment. I am satisfied, at least, that there were no goods paid for after they told me that.

T at paper is not correct if it shows otherwise. I don't know but what there may have been some goods bought for cash, but I don't know. It is some years ago, and it is hard for a man to remember that far back, as to every article that was bought or sold. I could not say whether the goods purchased from Tanner, Sullivan & Talbott on the 1st of May, as shown in "Exhibit 2," were purchased for cash or not. I don't see anything here on "Exhibit 3" as paid then. Neither does it show that the goods bought from C. Neab on May 1st, as shown in "Exhibit 2," were paid for.

Q. Look in your ledger to the account of Thomas J. Pope & Bros., and see if you made a purchase of them on April 30th of $50.83.

A. March 14th is the last purchase entered on the book.

Q. Your purchase, then, from Thomas J. Pope & Bros. of April 30, 1879, for $50.83, is not entered in your ledger and does not appear to be paid for in your bill of expenditures, does it?

A. That amount is credited upon new accounts.

Q. Look at the account of Chapman Valve Co. Do your books show you made a purchase of them on April 30, 1879, of $49.88?

A. No, sir.

Q. Look at your bill of expenditures and see if any of those purchases made by you on April 30, 1879, were paid.

A. There does not appear to be anything paid on the account.

Q. Was the Neibacher claim paid?

A. No, sir.

Q. Indianapolis brass foundry, $24.53. Does that appear to have been paid?

A. No, sir.

Q. C. A. Blessing, $9.25?

A. No, sir.

Q. On April 29th is an account here of Peck Bros. for $88.50?

A. It is not paid.

56 Q. On the 29th of April, Hamilton Rubber Company, $151.25.

A. That is not here in this bill of expenditures.

Q. Please make these papers from which you have refreshed your memory a part of your deposition.

A. I will do so. I attach them to this my deposition, make them a part thereof, and mark them Exhibits 2 and 3.

Q. Do I understand you to say that the last time you saw Bissell was in the latter part of April?

A. That is my best recollection.

Q. And immediately after seeing him you went over to Churchman and told him to take his judgment?

A. I told Churchman I could do nothing with Bissell, but I do not remember whether I told him to take a judgment or not. He said: "Very well; I will go ahead and take a judgment." I said: "Very well; I have done everything in my power."

Q. You went to see Churchman as soon as you saw Bissell and found out you could not do anything more?

A. I did, but I do not know whether it was that same day or not.

Q. It was almost immediately afterwards—within a day or two?
A. Yes. sir.
Q. Why had Churchman held this cognovit so long?
A. I requested him to hold it to see if I could not make some arrangement with Bissell.

By Mr. WINTER:

Q. After you had seen Bissell and found you could not make any arrangement, why did you go back to Churchman and tell him of it?
A. Because he had been holding this cognovit for me at my request and I thought it was right I should go to him and tell him I could not do anything more with Bissell, and he said he would go right on and take a judgment, and he did.

Questions by Mr. SPEED:

Q. About what time in 1879 did you leave Indianapolis and go to Colorado?
A. I left here on the 17th of March.
Q. How long were you in Colorado?
A. I returned in the fore part of April. I was gone two or three weeks.
Q. What understanding had you with Churchman in regard to confessing this judgment during your absence?
A. It was given so they could take judgment if Geo. P. Bissell crowded the thing.
Q. I understand you to say Geo. P. Bissell had already brought suit; your answer says in January?
A. I don't remember what time he brought suit; he had not any judgment against me.
Q. You say here on the 24th day of January, 1879, suits were commenced against you in the superior court of Marion county to foreclose certain mortgages which covered all your real estate. These were the Bissell suits, were they not?
A. I presume they were.

By Judge RAND:

Q. Did not you say a little while ago that Parrott commenced suit to foreclose, too?
A. Yes, sir.
Q. Did Bissell have more than one mortgage?
A. No, sir.

By Mr. SPEED:

Q. Bissell was one of the persons who brought suit, then, on this day, was he?
A. I believe that is right. I don't remember the date; the record will show, I suppose.

57 Q. Why did you put it in your answer as the 24th of January if it was not correct?

A. I supposed it was correct, and do yet.

Q. What obstacle was there to Bissell taking judgment at any time?

A. I cannot tell; I suppose he would be detained in the courts some way. It would have to go through in a legal way.

Q. You did not know anything about the condition of that suit, did you?

A. No, sir.

Q. What arrangement was there then between you and Churchman as to his taking judgment during your absence in Colorado?

A. If Churchman found out that Bissell was going to take judgment he had the power to go up and file the cognovit, I suppose, and take judgment himself.

Q. What understanding was there between you in regard to that thing?

A. No understanding more than I have stated to you, to secure the claim he had against me.

Q. You stated awhile ago you asked Churchman and he agreed not to take a judgment until you could find out from Bissell what he would do?

A. I asked him to hold off as long as possible.

Q. Was that after the 17th of March?

A. I don't remember, but it must have been on the 17th day of March because I was going away that day.

Q. It was on the 17th of March, then, you asked him to hold off?

A. I don't remember the date, whether it was on the 17th of March or after I came back. I think, probably, it was on the 17th of March. It was put into his hands so he could secure himself. He demanded it of me and I had to give it to him.

Q. Do you remember whether when you went to Colorado there was any arrangement between you and Churchman as to his taking judgment or withholding judgment or not?

A. He was to take judgment if he saw any other person was going to come in and take the property in my absence, he and Mrs. Knight.

Q. Was that in pursuance of a request from you?

A. No, sir; he told me he would take judgment if he saw any likelihood of anybody else taking the property.

Q. He told you that on March 17th?

A. He told me that on the 17th of March, that he should go ahead and take judgment if he saw any danger of anybody else taking judgment and taking the property.

Q. If he did not see any danger, he would not do so?

A. He would not take any judgment until I heard further from Bissell.

Q. On the strength of that you went to Colorado?

A. Yes, sir; those are the facts of the case, as nearly as I can remember.

Questions by Judge RAND:

Q. From the 17th of March to the 1st of May, was not your credit in the East perfectly good with parties you had been dealing with?

A. Yes, sir.

Q. Could not you have bought on credit any amount of goods you wished to?

A. Yes, sir; I could have bought $100,000 worth if I had been disposed to do so, but I did not buy only enough to keep up my assortment.

58 Q. And you did it with the hope and expectation of making an arrangement with Bissell and going on with your business?

A. Yes, sir.

Mr. SPEED: I am now through with my evidence, except I want to prove the judgment in the superior court of Marion county in favor of Pliny Jewell & Sons, the judgment in the United States court in favor of Spang, Chalfant & Co., and the issuance of executions and return of the sheriff and marshal *nulla bona* on each of those judgments, and I also want to take the deposition of Geo. P. Bissell.

Judge RAND: What do you expect to prove by Mr. Bissell?

Mr. SPEED: The dates of the interviews that have been spoken of by Mr. Knight and the amount still owing from Mr. Knight to Geo. P. Bissell & Co.

WILLIAM M. JILLSON, called for defendants, being first duly sworn, deposes and says:

Direct interrogatories by Judge RAND:

A. I was clerking for John Knight in 1879 up to the 3d of May. I have been associated with him for ten years as clerk and bookkeeper; am familiar with all his business. In the year 1879 Mr. Knight had a transaction with Fletcher & Churchman and Mrs. Knight which I regarded as a sale. He transferred his personal property located at Nos. 108 and 110 South Delaware street, being his stock of goods, to Fletcher & Churchman and Mrs. Knight jointly for the consideration of $10,000, which he had received from Mrs. Knight, and what he was owing Fletcher & Churchman. An execution was in the hands of the sheriff in favor of both of them. The property was taken in full payment of both of those debts. Mr. Knight represented the property to be worth from $18,000 to $20,000, but in the latter part of July, 1879, when the division was made, the stock of goods was worth $10,000. August 12, 1879, was the date the division was finally effected, but the division was made in July—between the 14th day of July and the latter part of that month. Mrs. Knight and Fletcher & Churchman each took half the goods. Fletcher & Churchman took their half away from the store. I don't know when Fletcher & Churchman and Mrs. Knight bought the stock of goods, but they commenced business there on the 1st of May and commenced selling it out as fast as they could. Mr. Knight was employed by them to sell it out, and I was employed by Mr. Knight, I suppose, for Fletcher & Churchman and Mrs. Knight to

assist him, and business was carried on by them until the latter part of July, when the stock was divided. There was no invoice taken on the 1st of May; they simply took the stock, and we carried it along for them, selling the goods and getting the money for them. When the inventory was taken and the goods divided it was found that the stock on hand and the amount received from sales after May 1 amounted to $14,000 and, something, instead of $20,000, as Mr. Knight supposed.

From the 17th of March to the first of May the business was conducted as it had been prior to that time, with the exception Mr. Knight was buying as moderately as he could. He bought simply what was necessary to keep up the assortment and keep the business together.

Some goods that had been ordered by Mr. Knight came to the store after the first of May. In April, some time between the middle and 20th of the month, he ordered a bill of goods, amounting to $50.83, of Thomas J. Pope & Bros., of New York. These goods arrived after the 1st of May, but I could not say how long.
59 They came to the store after Fletcher & Churchman and Mrs. Knight had bought it out, and they received the goods and paid for them. They composed no part of the goods bought of Mr. Knight.

The Chapman Valve Company do business in Boston. In April, 1879, Mr. Knight ordered a bill of goods from that company amounting to $49.88. I presume that bill was ordered between the 15th and 20th of April, provided they filled the order promptly. It would take four or five days for the goods to come from Boston to Indianapolis, and the invoice was credited to the Chapman Valve Company on the 1st or 2d of May, and an invoice is never credited until after the goods arrive. These goods were not in the store on May 1, when Fletcher & Churchman and Mrs. Knight took possession. The new firm took them on their arrival, paid for them, and sold them.

C. Neab is a plumber doing business in Indianapolis. I cannot tell whether that amount, $17.74, is an invoice of goods or simply some goods were furnished him and he returned to us. Mr. Neab was owing Mr. Knight more than $200, and this $17.74 was passed to his credit.

Tanner, Sullivan & Talbott do business in Indianapolis. That amount there, $9.82, was credited to them on the 1st day of May by the new firm. I don't know what it was for; an invoice of material, I suppose. The new firm paid for it. It was not in the stock of goods they bought of Knight.

L. Neibacher, on April 30, 1879, was owing John Knight $39.50, and this bill of Neibacher's account was a running account. He is a brass finisher, and we had occasion for him to do a little work nearly every day in the month.

The bill of the Indianapolis brass foundry for $24.53 was a bill similar to L. Neibacher's brass finisher's bill for a month's work. They did work for us, and at the end of the month they would bring in their bill.

C. A. Blessing does business in Philadelphia; a manufacturer of bath-tubs. The goods, amounting to $9.25, credited April 30, were undoubtedly in the house. The bill is probably for a bath-tub, and, I presume, was ordered by Mr. Knight some time in the month of April. It would take a day and a half for the order to get to Philadelphia from here, and then it would take from four to six days for the goods to come from Philadelphia here.

Peck Bros. & Co. do business in New York. This bill of $88.50 may have been ordered in March, as they are generally pretty slow. The order was either by letter or given to an agent here. Some of these orders were given to agents. They were credited on April 28 with $1.27 and on April 30 with $87.30, and if the goods were received at that time the order must have been given by the 10th of April.

The Hamilton Rubber Company do business at Trenton, New Jersey. This invoice of $151.25 was credited to them April 30. The goods were in the store when Fletcher & Churchman and Mrs. Knight got the goods. If the goods had been ordered on the 19th of April that would have given ample time to have got here by April 30th. It took from four to seven days to get goods here from New York or Trenton; hardly ever in four days.

H. McSharer & Co. do business at Baltimore. That bill, amounting to $21.26, was for the new firm. I have not any such account on these books. The McSharer account was closed here long before that. I do not know how it happened to get into this account of goods purchased by John Knight. I suppose the way that invoice happened to get into that stock was because that stock was probably taken off from the sales-book and the regular invoice book, and, without looking to see whether the goods were in the store or not, it was put down there. If the goods had been in the store
60 they would have been checked off the invoice and posted up. The goods were not in the store, but the invoice was. All the goods Fletcher & Churchman and Mrs. Knight got from John Knight ought to be on the ledger, and if not on that book they went to the purchasers. The new firm paid for those goods.

John H. McGowan & Co. do business at Cincinnati. That bill, amounting to $14.54, came into the old firm. They had been in the store about two days at the time of the sale.

P. Jewell & Sons do business at Hartford, Connecticut. That bill, amounting to $45.57, had been received. It would take two nights and a day for a letter to go from here there, and then it would take about a week for the goods to get here.

Mooney, Taylor & Smith reside here in the city. Those goods, amounting to $54.03, were received by John Knight.

Spang, Chalfant & Co. do business at Pittsburgh. That bill, amounting to $849.80, was received here April 7th. I cannot tell when they were ordered; they were ordered from here either by letter or through an agent, and I don't remember which. In the course of business it would take those goods one week to get here from the date of the order. The dates appearing on that sheet are the dates the invoice arrived, and the goods may or may not have arrived at the same

time. The invoices as a general thing arrived a week before the goods, unless the order was from Cleveland, Cincinnati, St. Louis, or Chicago. We calculate fully a week on Pittsburgh, Philadelphia, and Boston freights. The bill never came with the goods.

During the month of November, 1878, Mr. Knight purchased $3,780.70 worth of goods. During the month of January, 1879, he purchased $3,687.80 worth of goods. From the 17th of March to the 1st of May, 1879, he purchased $4,117.94 worth of goods. That amount includes some he did not get, viz: Chapman Valve Company's invoice, Thomas J. Pope & Bros.' invoice, and C. Neab's; but that is the aggregate of the invoices he received.

Mr. Knight's credit was good during all the time from the 17th of March to the 1st of May; he could have bought all the goods he wanted on credit.

Mr. Knight bought two car-loads of pipe from A. M. Byers & Co., of Pittsburgh, and one car-load came in, which we received. The other car-load arrived here about the time this sale was made—two or three days before, and I have forgotten whether we telegraphed Byers or wrote him that we could not receive the pipe and did not receive it. A car-load of pipe will average $1,000, and we could have taken that into the store very easily if we wanted to.

When Mr. Knight went to Colorado he did not leave any instructions with me as to buying. I knew he was in difficulty in March, but did not know he would have to sell out. My impression is Mr. Knight was absent in Colorado about three weeks.

Cross-examination by Mr. SPEED:

A. After May the accounts were kept in a new set of books. We refused, as I have stated, to receive a car-load of pipe from Byers & Co., of Pittsburgh. After this sale John Knight, as agent, continued dealing with Byers & Co., I believe. I did not know that Mr. Knight would have to close out until he did so.

And further the witness saith not.

FRANCIS M. CHURCHMAN, called for defendants, being first duly sworn, deposes and says:

Direct interrogatories by Judge RAND:

61 A. My age is 47 years; am a banker, and reside at Indianapolis. Stoughton A. Fletcher, Sr., and myself compose the firm of S. A. Fletcher & Co.; I know John Knight, and have known him 25 or 30 years. On the 2d day of March, 1879, he was indebted to us in the sum of about $10,000, viz: one note for $1,000, dated February 8, 1879, payable in sixty days; one note, dated February 15, 1879, for $1,000, payable in sixty days; one note for $2,000, dated December 25, 1878, payable in ninety days; one note $4,000, dated January 2, 1879, payable in sixty days; one note for $1,500, dated February 1st, 1879, payable at sixty days: one note for $500, dated March 10, 1879. It was renewed on March 10, 1879. The dates of these notes I have given you are dates of the renewals.

This last $500 note was a renewal of a note I had against Knight on the 2d of March.

On the 2d of March, 1879, I took a $10,000 note from Mr. Knight, payable one day after date. It was given as collateral security for this indebtedness of $10,000 represented by these different notes. I took that note so I could sue it at any moment; go and take judgment on it to secure this indebtedness. I wanted it in a shape so I could take judgment on it, because there was a suit about to be instituted, if not already instituted, by Bissell & Co. to foreclose a mortgage against John Knight. I did not sue it at once, because John Knight was under the impression and hope, and represented to me he believed he would be able to make an arrangement with Mr. Bissell to take the mortgaged property in payment of his debt, and if he did, then I was going to let him go on; give him further time. He told me if he could get that out of the way he had no doubt he could go on and gradually pay me off, still carrying on his business.

I took the cognovit on the 17th of March because John Knight up to that time had not been able to make any arrangement with Mr. Bissell about this mortgage, and I was afraid that by some mishap or other Mr. Bissell would get judgment on his claim, and I went to Mr. Knight and insisted on his giving me a cognovit, so I might have it in my power to come in any minute and take a judgment on that cognovit. The cognovit was taken particularly on March 17 because I had information that Knight had not, up to that time, been able to arrange with Mr. Bissell to fix that matter up. I don't remember about his going away; he may have been; he has testified so and I presume he was. If he was going away I did not want him to go away without securing me.

When he gave the cognovit he told me he was indebted to his wife in the sum of $10,000, and he would have to secure her also. He said that was for borrowed money; that she had mortgaged her property to loan him the money. The reason I did not take judgment immediately was John Knight kept representing he was undoubtedly in a position where he could influence Mr. Bissell to take that property in payment of his debt, and if he did, of course there would be no necessity of my taking judgment, because that would enable him to carry on his business, and he could do so successfully and pay our debt without any doubt.

I knew the property that was mortgaged; I did not think it was worth the mortgage debt as times were then. The property was valuable property and was good for the first mortgage undoubtedly, but I doubted very much whether, with the second mortgage, the property would bring sufficient to pay the two debts. My understanding was that Cottrell and Knight both signed the second mortgage, and that Cottrell gave a deed for his undivided half to Knight. I think Knight was on the note too but am not certain. The property was amply good for the first mortgage of $25,000, and if Knight was not personally bound for the balance that was all he was
62 in for. Mr. Knight told me, as I have stated, that he thought he could arrange with Mr. Bissell to take the property for the

debt, and relieve him from liability, and on those representations I waited. I held the matter, and it run along until about the last of April, I think the 29th or 30th. I then had some information, I don't know whether I got it from Judge Rand or not, that Bissell was pressing this suit and was likely any moment to take judgment on it. I then made up my mind that the only course for me to pursue to secure my debt was to take judgment on this cognovit without delay. I went to Mr. Ayres' office in the evening about half past three o'clock; that was on the 30th day of April, if it was not Sunday; it may possibly have been on Saturday evening, but I know it was the next business day afterwards that the judgment was taken. I went to Mr. Ayres and told him I was afraid to let that matter stand any longer; that Knight had not been able to make this arrangement with Mr. Bissell and I was going to take judgment on that note and cognovit. He said, then, "If you insist upon it go ahead and do it." I told Mr. Ayres to go right up and enter judgment upon it. Then it was too late for my time to go home, and Mr. Ayres said it was too late, but he would go up the next morning, if it was not Sunday; if it was, on the following Monday, and enter judgment on the cognovit.

When the cognovit was given me there was no agreement that I should wait; it was entirely in my discretion; it was given to me, and I could exercise my judgment as to when it was necessary for me to enter up that judgment to secure my debt.

After the judgment was rendered and execution issued, before the execution was levied, Mr. Knight came up to me and said if I went on and sold that stock of goods under an execution by the sheriff that I would get but little on my debt; it would not bring anything, and the better way was to buy the stock out and take time to sell it, and thereupon I made arrangements to buy half of the stock, and Mrs. Knight the balance, for the debt which was due on the 2d or 3d of May. We took possession of the stock and appointed Mr. Knight our agent to go on and sell it. He went on, and for some time the stock was being sold out, but as the sales were small and the amount of goods that were bought to replenish the stock to make the other goods sell about as much, we found we were not making any headway, and I told Knight that we must stop; that I could not stand the expense, and if we could not do any other way to give me my half of the goods. He saw Mrs. Knight, and she came down and arranged with me to divide those goods. I went in there and took my half of the goods out, after having an invoice taken. I took one piece and she took another. We took a piece about, taking an invoice as we went along. I took my half of the goods and stored them in another building and sold them out the best I could.

The money that was realized by Mr. Knight, while acting as our agent, was credited upon the amount of this indebtedness. I am a little ahead of my story. I should have stated that at the time the judgment was taken, at the time we made the purchase of this stock of goods, Mr. Knight had a claim against a bankrupt concern here on which he was in hopes of being able to make something out of

the individual stockholders. He told me when I purchased my part of that stock of goods that there was ample there to pay my debt; that he had no doubt of it, but would transfer this claim to me if in the end I did not succeed in getting enough money out of that stock of goods; that I should have enough out of this claim, if anything was realized on it, to make my claim good, and
63 give to Mrs. Knight the remainder to make her part good, and it was done in that way. I have never realized anything out of that claim yet, but have been paying out money.

I was in possession of half those goods there from about the 1st or 2d of May, possibly the 3d of May, 1879, until about the first of the following August. We were nearly a week making a division of those goods. After we had made the division and found how the account stood, the amount of money he had received from the sale of goods, and the amount of goods we got under this division, we found Knight owed us $2,805. I then surrendered up those old notes to him and took a note from him for that balance. When we bought the goods Knight was confident there was enough goods there to pay both our claims, and I relied entirely upon his representations and knowledge in regard to it.

Q. State whether you held the cognovit after Knight gave it to you on the 17th day of March until the 1st day of May with the view, purpose, and intent that he might purchase goods of other parties on credit and put them into the store so you could levy on them and sell them?

A. I did not.

Q. Did any such idea enter your mind or his, so far as you know?

A. No, sir; there did not.

Q. What did you know about his purchasing goods?

A. I knew nothing about it. I supposed Knight was carrying on his business as usual there in the hope of being able to arrange with Bissell and avoid the trouble with me.

Q. The reason you held off was to enable him, if he could, to get through with his trouble and go on with his business and pay his debts?

A. Yes, sir.

Q. Did you take that cognovit with a view to hinder, delay, and defraud his creditors?

A. I did not. I took it to secure our debt.

Q. Did you purchase the goods and take possession of them with a view to delay and hinder the creditors of Mr. Knight?

A. I did it for the purpose of securing our debt only.

Q. Your debt was an honest and just debt?

A. Yes, sir.

Q. What was it for?

A. Borrowed money loaned to him.

Q. Why were any purchases made after the 1st of May by you and Mrs. Knight?

A. Goods were bought in small amounts for the purpose of assorting up the goods to make the old goods sell which we had on hand.

Q. On whose credit were they bought?

A. On Mrs. Knight's and Fletcher & Churchman's.

Q. Have you ever got anything on that indebtedness except that stock of goods?

A. No, sir; except the assignment of this old claim, from which I have realized nothing.

Q. Have you realized anything from any other source on this indebtedness of $10,000 except that stock of goods and this money you got from it?

A. No, sir.

Q. How much did you actually get?

A. We got in goods from the store $4,336.94. We got in money for the goods sold out of the store $2,578.26, and I took a note from Mrs. Knight for $388, which she afterwards paid. She was going to continue the business, and there were some tools there, and instead of dividing them I sold our interest in them to her, which amounted to $388, which left a balance of $2,805, for which John Knight gave me his note.

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Q. Did you know anything of his owing Pliny Jewell & Sons at any time from the 2d of March until after you bought out the stock of goods?

A. No, sir; I never heard anything about it until after this suit.

Q. Did you know anything about his owing or purchasing goods of Spang, Chalfant & Co.?

A. I did not.

Q. Did you know he had purchased any of them after the 2d of March?

A. I did not.

Q. When did you first hear he owed them anything?

A. When I received a subpœna in this case.

Cross-interrogatories by Mr. SPEED:

Q. You say, after hearing from some one that Bissell was pressing his suit against Knight, you went to see Knight and told him you would have to have that cognovit put in judgment.

A. Yes, sir; after I got the information that that case had reached such a stage it was possible for them to take judgment on it, then I went to Knight and informed him I was going to take judgment on this cognovit.

Q. Is it not true that Knight found that out from Bissell and then went and saw you?

A. No, sir; I think Mr. Knight is mistaken in regard to that.

Q. This bankruptcy claim, which you say was assigned to you, was against Rumsey & Co., was it not?

A. The judgment I got was against the corporation, the Indianapolis Railway and Supply Co., and now we are trying to make the stockholders liable.

Q. You say after Knight gave you this cognovit you supposed he went on as usual in his business?

A. Yes, sir.

Q. You had known him for 25 or 30 years?

A. Yes, sir; he had been doing business with us as an individual, or in partnership with Cottrell, I expect 25 years.

Q. And you knew his condition?

A. I did not know anything about his condition except as he represented it to me, and generally we have to depend upon the representations of our customers.

Q. He was obtaining loans from you about that time?

A. Yes; I believed he was good when I loaned him the money.

Q. He was obtaining loans from you just prior to this?

A. No, sir; he was making no new loans; he was renewing his old indebtedness to us. Mr. Knight had not made any new loans for some time previous, probably a year or a year and a half. He had a contract for some work at Peru and I loaned him, I think, over and above this old indebtedness of $10,000, some three, four, and possibly five thousand dollars, and at the time that became due he paid it up, and I got part of this money he borrowed from his wife in payment of that debt, which reduced it down to the old loan. I think that was some time in the last of 1877, or during 1878 some time.

And further the witness saith not.

It is admitted by the plaintiffs in this case that John Knight was not personally liable to Geo. P. Bissell & Co., except for the first mortgage note of $25,000 and interest thereon, or that he was only personally liable as appears in his answer.

Adjourned until 10 o'clock a. m.

65 FRIDAY, *January* 20, 1882—10 a. m.

Parties met pursuant to adjournment.

Present: The same as yesterday.

JOHN KNIGHT, recalled for plaintiff, states that Pliny Jewell, Marshall Jewell, Chas. A. Jewell, and Lyman Jewell are and were, during the dealings and transactions set out in the bill, copartners under the name of Pliny Jewell & Sons, doing business at Hartford, Connecticut, and were citizens of the State of Connecticut, and is informed and believes they are the same persons who recovered judgment against him (John Knight), as set out in the bill, and that said judgment is still in force and unpaid and unsatisfied.

He further states that the complainants, Chas. H. Spang, John W. Chalfant, Campbell B. Herron, and George H. Chalfant are and were, as he is informed and believes, during the dealings and transactions set out in the bill, copartners under the name of Spang, Chalfant & Co., doing business at Pittsburgh and citizens of the State of Pennnsylvania, and are the same persons who recovered judgment against respondent, John Knight, as set forth in the bill, and that said judgment is still in force, unpaid, and unsatisfied.

That execution and return of *nulla bona* was had under each judgment, as set out in the bill; that none of the complainants, so far as

he is informed, knew of the execution or existence of the warrant or power of attorney named in the bill until after May 1, 1879.

A. C. AYRES, called for complainants, being duly sworn, deposes and says:

Direct interrogatories by Mr. SPEED:

A. I am the attorney named in the cognovit described in this case. I drew it up and left it in Mr. Churchman's possession; he was to keep it at the bank. I did not inform anybody of the existence of that cognovit.

Cross-interrogatories by Judge RAND:

A. I am an attorney-at-law and prepared this cognovit and confessed the judgment in court. The cognovit was given simply to pay and protect Fletcher & Churchman and Mrs. Knight. In the sale of the goods to them there was no intention, so far as I know, to hinder, delay, and defraud the other creditors of John Knight; the sale was solely to pay them an honest debt, giving them that much preference over the other creditors, as I understood at the time and believe. These two claims were for borrowed money, as I was told, and were wholly unsecured, except as they were secured in this transaction. No instructions were given me to keep this thing quiet or concealed.

The way the judgment was taken was this: Mr. Churchman came to my office and told me there was danger of Mr. Bissell taking a judgment against Knight, and that he was not going to wait any longer; that he wanted that judgment confessed at once, and he handed the paper to me then, which up to that time had been in his possession. This occurred on the day before the judgment was taken, unless, as Mr. Churchman says, the next day was Sunday. If this judgment was taken on Monday, then it was the Saturday before. I told Mr. Churchman I ought to go and see Mr. Knight first, and he went down with me to Mr. Knight's store and told Mr. Knight it was necessary, in his opinion, to take that judgment; that he was not going to wait any longer. "Well," Knight said, "of course I cannot help it, if it has to be done." He said to me then to take it, so I walked up Delaware street with Mr. Churchman as far as the court-house, but it was too late then to take the judgment that night—it was then a little after 5 o'clock—and the next morning, or at least the next business day, in the morning, I went into court and took the judgment.

66 The way Mrs. Knight came to be included in that cognovit was this: She sent for me and informed me that Mr. Churchman was insisting on having a cognovit executed so he could take judgment. She said Mr. Knight was owing her for money he had borrowed of her; that she had put a mortgage on her own property to loan him that money and held his note for it, and she thought Mr. Knight ought to protect her as well as he ought to protect Fletcher & Churchman. I think she gave me the note at that time; she either gave it to me then or at some subsequent time.

The note now shown me is the note she had; she said she wanted it fixed so Churchman could not take any advantage of her in any way—that is, she wanted to be assured that her claim was protected just the same as his was, and so when I prepared the cognovit I made it a joint one, so there could be no doubt, as I thought, but that she would share equally in any judgment that would be taken.

Mr. Winter, counsel for respondent, Mrs. Knight, offers in evidence and reads to the master the note referred to, dated December 23, 1878, for $10,000, signed John Knight, which said note is hereto attached, marked " Exhibit 5."

Witness resuming: After the judgment had been taken the question came up as to levying the execution. Mr. Knight, I think, was afraid if the property was sold on execution it would not pay very much. Perhaps Mr. Jillson said the same, and I know I talked with Mr. Churchman and with the parties about it, and the question was discussed as to what was the best mode to dispose of the property so as to realize as much as possible out of it, and I was also, I think, consulted as to whether they could buy the stock for their debt and sell it out in the ordinary course of business—close it out, and I advised them that could be done. Then Mr. Churchman and Mrs. Knight concluded to do that, and they took the goods down there for their debt.

Mr. Knight represented that there was about $20,000 worth of goods there—that is, if sold out in the ordinary way, not closed out; that it would invoice out $20,000; the sale took place within a day or two of the time the judgment was taken. I suppose it was about the 3d of May.

Redirect interrogatories by Mr. SPEED:

A. Mrs. Knight sent for me to come to her house a day or two before the cognovit was executed. Mr. Knight told Mr. Churchman and Mrs. Knight he thought there was about $20,000 worth of goods in the store, if sold out in the ordinary way, and they took the goods for their debt.

And further the witness saith not.

FRANCIS M. CHURCHMAN recalled for respondents.

Direct interrogatories by Judge RAND:

Q. At the time this note for $10,000, dated March 1st, 1879, was given and at the time the cognovit was taken and at the time you and Mrs. Knight bought out the stock of goods on the 1st or 3d of May had you any information, knowledge, or belief that Knight made this note and cognovit and sold you and her the goods with the intention or view of hindering, delaying, or defrauding his creditors?

A. I had not.

Q. What did you understand was his object in making the papers and selling you and Mrs. Knight the goods?

A. My understanding was his object was to secure his honest debts, preferring them as he thought he had right to under the law.

67 Q. Both of these debts were for borrowed money?

A. Yes, sir.

Q. Look at the note now shown you and state whether it is the note he gave you.

A. Yes, sir; it is.

Judge Rand, counsel for respondents, Fletcher & Churchman, offers in evidence and reads to the master the note referred to and the cognovit attached, which said note and cognovit are hereto attached, marked "Exhibit 6."

Q. The other notes have been surrendered and cancelled?

A. Yes, sir.

Q. If he had any intention to defraud his creditors in this transaction did you have any knowledge or belief that he had?

A. No, sir.

Cross-interrogatories by Mr. SPEED:

A. I never told the complainants in this case, or any one acting for them, prior to May 3, 1879, that I had this cognovit or any other security from Knight.

Redirect interrogatories by Judge RAND:

A. I did not know any such persons were in existence or that Knight owed them.

ELIZA J. KNIGHT, called for respondents, being first sworn, deposes and says:

Direct interrogatories by Mr. WINTER:

A. My name is Eliza J. Knight; am the wife of John Knight, and one of the defendants in this action. At the time the confession of judgment was given to me and Mr. Churchman John Knight was indebted to me. I held his note for $10,000. The note now shown me, marked "Exhibit 5," is the note I held. The note was in my possession before and at the time of the confession of judgment. The note was executed on the day it bears date, viz., December 23, 1878, and was given for $10,000 in money that I loaned him. I procured the money by mortgaging my piece of property on North Delaware street. The money, $10,000, was given Mr. Knight at the time he gave me the note. Nothing had been paid on the note at the time this confession of judgment was given me and Mr. Churchman. I had no security on this indebtedness except his personal note. The way I came to take that confession of judgment from him was this: Mr. Knight told me that Mr. Churchman was about to have a cognovit and judgment—I understood it in that way—to take a judgment against him, and so I sent for Mr. Ayres to come up to the house. I talked to him about it, and he said that it would be the best

way to have a cognovit filed; my interest was with Mr. Churchman's; that was the only way. I told him I wanted him to look after my interest and see that I got what was due as nearly as possible; to see that it was secured also. He told me the best way was to have a cognovit made to me and Mr. Churchman. I did not give him the note marked "Exhibit 5" on the day I talked to him about it, but I afterwards gave it to him.

Q. At the time that confession of judgment was made to you and Mr. Churchman by Mr. Knight, state what your object was in taking it.

A. To secure myself, as far as possible, on this note.

Q. If Mr. Knight had any intention in executing that confession of judgment to defraud, hinder, or cheat any of his creditors, what knowledge did you have of any such intention?

A. I had no knowledge of anything of the kind.

Q. Did you at that time know of Mr. Knight's being indebted to Pliny Jewell & Sons or Spang, Chalfant & Co., in any sum.

A. No, sir.

68 Q. What arrangement was there, if any, between you and Knight and Churchman about Knight going on in business and that confession of judgment being held back and he being allowed to purchase goods on credit?

A. There was no arrangement.

Q. Was there any understanding of that kind between you?

A. No, sir.

Q. Was it spoken of in any way?

A. No, sir; there was no such arrangement.

Q. Do you know why it was this judgment was not entered up at the time it was given, but held until the first day of the following May?

A. I could not tell you. I gave it into Mr. Ayres' hands. I supposed he could attend to it better than I could.

Q. Was there any agreement, arrangement, or understanding upon your part with Mr. Knight that the judgment was not to be entered up, but was to be kept off?

A. Not with me.

Q. At the time the judgment was taken, on the 1st of May, state whether there was any intention on your part in taking that judgment to cheat or defraud any of the creditors of Mr. Knight?

A. No, sir; I knew nothing about Mr. Knight's creditors.

Q. If Mr. Knight at that time had any intention of cheating or defrauding any of his creditors, state what knowledge, if any, of such intention you had.

A. I had no knowledge of it at all.

Q. Did you know at that time of his being indebted to Pliny Jewell & Sons, or to Spang, Chalfant & Co., in any amount?

A. No, sir; I knew nothing about his creditors.

Q. State whether at the time this judgment was taken, on the 1st day of May, 1879, Mr. Knight was indebted to you in the amount of this note—$10,000.

A. He was.

Q. No payments had been made on it at all?

A. No, sir; not any.

Q. Was there any arrangement made about the 1st day of May between yourself and Churchman and Knight about buying his stock of goods for this indebtedness?

A. Yes, sir.

Q. Go on and state what the arrangement was and how you came to take the goods.

A. Because we thought there could be more realized out of them that way than to sell them out at sheriff's sale, and we took the goods for the notes Mr. Churchman and I held.

Q. At that time what did you understand from Mr. Knight the amount of the goods was?

A. About $20,000 worth.

Q. Was there any arrangement, after you had taken those goods from Knight, about carrying on the business between yourself and Churchman? If so, state what it was.

A. Not any; only the store was to be run and a few goods bought until they were all sold out, and Mr. Knight was to run the store for myself and Mr. Churchman.

Q. How long was the business carried on there by yourself and Churchman?

A. Until in August some time.

Q. What was done then?

69 A. Mr. Churchman wished to have the goods divided, because he did not wish to be bothered with it any longer, and the goods were divided piece by piece. Mr. Churchman took one piece and I took the other until they were all divided.

Q. Were they divided equally, each one selecting a piece alternately?

A. Yes, sir.

Q. What was done with the amount of money that had been realized by the sale of goods from May up to that time?

A. All that had not been spent in purchasing new goods was divided also.

Q. What did Churchman do with the share of goods he got?

A. I understood he took them from the store and put them somewhere else.

Q. What did you do with the balance of the goods you got?

A. Sold them out; carried on the business in my own name, and am still carrying it on, on Pennsylvania street.

Q. Have you ever received any payment on account of your $10,000 note, except what you got from those goods?

A. No, sir; not a cent.

Q. What has been done by you with your property on North Delaware street, which you mortgaged to procure this sum of $10,000?

A. I sold it, and the person who bought it assumed the $10,000 mortgage on it and took it out of the purchase-money.

Q. So that mortgage has been paid out of that property?

A. Yes, sir.

Q. Did Mr. Knight ever pay you in any way on account of that mortgage, except by these goods?

A. No, sir.

Cross-examination by Mr. SPEED:

A. The way I sold my property on North Delaware street I got $18,000 for it—that is, $8,000 over and above the mortgage of $10,000. There was no particular reason why the cognovit should be left with Mr. Churchman. I did not know that it made any difference who had it. I took these goods of Mr. Knight for the judgment that had been rendered on my note.

And further witness saith not.

A. C. AYRES, recalled for respondents.

Direct interrogatories by Judge RAND:

Q. Please state why this cognovit was left with Mr. Churchman and why the judgment was not taken at once.

A. At the time it was executed Mr. Knight was anxious that a judgment should not be taken; he said he had enough property there, and he thought business would improve soon and, if he could get Bissell out of the way, he could carry on his business and pay every debt he owed—pay Churchman off every cent; and he said, "Now I have an arrangement to see Bissell or, at least, to see his attorneys and see if I cannot get him to take that property for the debt;" and he further said that the property was worth a good deal more than the mortgage he owed Bissell, and that he would surrender it and give the whole thing to him and remove that debt, and he thought he could get Bissell to do it; that he wanted us to wait until he could make such an arrangement as that, and that he thought no judgment would be taken immediately. Mr. Churchman insisted that there was danger, and he was not going to wait if he thought judgment would be taken. So Knight agreed that the cognovit should be left in Mr. Churchman's possession, and, whenever
70 Mr. Churchman said so, I should go up and take judgment, but at the same time he asked Mr. Churchman to wait; that he was going to see about this other matter and would let him know.

Q. After Knight came back from Colorado, then what?

A. I went with Knight on one occasion, I remember, to see Bissell. The delay, as I understood it, in effecting this arrangement was owing to the fact that Bissell had not come out here, and the parties here did not want to act in his absence, and I went with Mr. Knight to see Mr. Bissell. Mr. Cottrell was along. We met Mr. Bissell at the office of his agents here, Messrs. Drew & Bennett, and we talked the matter all over to convince Mr. Bissell that the best thing he could do was to take that property and release him from any liability in the matter, and he would make him a deed for it; but Bissell was not convinced of that fact, and declined to do it.

Q. How long was that before this judgment was taken?

A. But a short time; only a few days, according to my recollection. I am not sure whether Knight tried any further negotiations with Bissell after that time or not. My understanding was that they then pushed their suit forward in preparation to take their judgment of foreclosure, and Mr. Churchman was apprised of that fact in some way, and he came in and demanded that a judgment should be taken; and, notwithstanding that Knight had agreed that whenever Churchman said the judgment should be taken I should take it, still I told him I thought I had better go down and see Mr. Knight first, and Churchman and I went down and saw Knight and them together. Then judgment was taken, as I have already stated.

Q. Tom Cottrell was also interested in this property, was he not?

A. Yes, sir; he joined in the mortgage.

Cross-examination by Mr. SPEED:

Q. You say Mr. Knight insisted that Mr. Churchman should not take that judgment until he could see Mr. Bissell. Is that correct?

A. Yes, sir.

Q. You know that of your own knowledge, do you?

A. Yes, sir; I know that. I don't know as he said until he could see Bissell, but until he could see if he could not make this arrangement with Bissell.

And further the witness saith not.

Complainants' counsel offer in evidence the record in case No. 27623, superior court Marion county, entitled Marshall Jewell *vs.* John Knight; judgment, $440.20 and costs.

Also the record in case No. 7159, U. S. court; Chas. H. Sprang *et al. vs.* John Knight; judgment, May 3, 1881, for $1,032 and $20.27, costs of suit.

JOHN KNIGHT recalled.

Questions by the master:

Q. These judgments were rendered against you for goods bought of those parties on the dates indicated and testified to by you before?

A. Yes, sir.

It is ordered, by consent of parties, that the deposition of Geo. P. Bissell be taken on written interrogatories prepared by the respective parties and submitted to each other and to be sent in one enclosure; that the deposition may be taken before any notary public or officer authorized to take depositions at Hartford, Connecticut, and said deposition is to be taken with all convenient speed.

Adjourned indefinitely.

71 THOMAS COTTRELL, being duly sworn, says:

Was Mr. Knight's partner some years ago and joined in mortgage to Bissell & Co.; he joined in a mortgage with me to Geo. P. Bissell.

I went to Martindale's office in Indianapolis, corner of Market and Pennsylvania streets, to get him to take property for debt. It was before the suit was brought. He was threatening to sue us, and Knight proposed that we should deed him the property for the debt. He (Bissell) refused to do it. I never went to see Bissell with Knight but once; that was before Knight went to Colorado. Knight had nothing to do with the second mortgage except to join with me, he not being or becoming personally responsible for the debt, the debt secured by that mortgage being my individual debt.

The first mortgage to Bissell was for $25,000, the second for $15,000; those two were the only mortgages Knight and I ever made to Bissell.

Cross-examined:

I was sued on Col. Ives' paper, and they sold my farm subject to Bissell's mortgage; Knight bid it in for me.

EXHIBIT "1."

John Knight, dealer in wrought-iron pipe and fittings, brass goods, supplies in general for steam-fitters, railroads, and machine-shops, Nos. 110 and 111 South Delaware St.

INDIANAPOLIS, *May* 3, 1879.

Spang, Chalfant & Co.:

In consequence of a foreclosure suit, which will terminate against me personally to the amount of forty-five thousand dollars, I am compelled to inform you that I cannot pay my indebtedness.

The circumstances are as follows: Some years ago I, with a partner, erected a block of buildings. Years afterwards we made a loan of twenty-five thousand dollars, one-half of which I was liable for. Subsequently another loan of fifteen thousand dollars was made by my partner upon his individual one-half, from which I have never received any benefit whatever.

About one year ago I was necessitated to buy the individual one-half belonging to my partner at sheriff's sale; this made me liable for the entire indebtedness. The mortgage holder lately instituted suit to foreelose and for a personal judgment (not being willing to accept the mortgaged property for the amount of the mortgage). Two other creditors, feeling that their claims were in jeopardy, secured judgment against me for twenty thousand dollars. They have taken my stock of goods and personal property to satisfy their claims; I am left without resources to pay my debts.

I take the earliest opportunity to give you the information. Under the circumstances I can offer nothing in settlement except my note for the amount I owe you at one year from date, and bearing (7) seven per cent. interest. I shall use my endeavors to pay at maturity.

My unsecured liabilities are less than ten thousand dollars.

In the past twenty-five years of business I have paid without default, and my inability to pay now is keenly felt.

JOHN KNIGHT.

I shall continue the business as an agent for the owners of the goods, and trust our future business will be satisfactory.

JOHN KNIGHT.

72 EXHIBIT "5."

$10,000. INDIANAPOLIS, IND., *Dec.* 23, 1878.

Sixty days after date I promise to pay to the order of Eliza J. Knight ten thousand dollars and ten per cent. attorneys' fees, with interest at ten per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

(Signed) JOHN KNIGHT.

EXHIBIT "6."

$10,000. INDIANAPOLIS, IND., *March* 1, 1879.

One day after date I promise to pay to the order of S. A. Fletcher & Co. ten thousand dollars and ten per cent. attorneys' fees, with interest at ten per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

(Signed) JOHN KNIGHT.

Cognovit.

Know all men by these presents that I, John Knight, of Marion county and State of Indiana, do hereby authorize and empower Alexander C. Ayres, or any attorney-at-law of said State, to appear in the superior court of Marion county, Indiana, at any regular term thereof and waive the issuing and service of process, and receive a complaint or declaration in favor of Eliza J. Knight and Stoughton A. Fletcher and Francis M. Churchman, or of —— against me, or ——, and confess said action for such sum as may appear to said attorney to be due at such time of confessing judgment on the two notes described in substance as follows, viz: One note for the sum of ten thousand dollars ($10,000), dated December 23, 1878, payable sixty days after date to the order of Eliza J. Knight, with ten per cent. interest per annum until paid, and without any relief whatever from valuation or appraisement laws, executed by me; and also one note for the sum of ten thousand dollars ($10,000), dated March 1, 1879, and payable one day after date to the order of S. A. Fletcher & Co., with interest at ten per cent. per annum from date until paid, value received, without any relief whatever from valuation or appraisement laws, and executed by me, both of said notes providing for ten per cent. attorneys' fees, and waiving presentment for payment, protest, and notice of protest and non-payment, and to permit

a judgment to be then and there entered for such sum and costs, without any relief whatever from valuation or appraisement laws, and thereupon to release all error and waive all right and benefit of appeal, and for what said attorney shall do in the premises this shall be a sufficient warrant.

Witness my hand and seal this 17th day of March, 1879.

[SEAL.] JOHN KNIGHT.

STATE OF INDIANA, } ss:
Marion County, }

Before me, a notary public in and for said county, this day came the said John Knight and acknowledged the execution of the above warrant of attorney to be his act and deed for the purposes therein mentioned, and, being by me duly sworn, on his oath says that the said debt is just and owing, and that such confession is not made, nor is the above warrant of attorney given, nor is the judgment to be entered thereon confessed or to be confessed, for the purpose of defrauding his creditors or any of them.

JOHN KNIGHT.

Acknowledged and subscribed and sworn to before me this 17th day of March, A. D. 1879, as witness my hand and notarial seal.

[SEAL.] EDGAR A. BROWN,
Notary Public.

Expenditures from March 17 to May 3, 1879, Inclusive.

March 17.	Draft collection	$ 25
	Old lead	20
	John Knight	31 25
	Dan. Cully	5 00
	John Knight	200 00
	Draft collections	30
	John Knight	5 00
March 18.	Expense	1 75
	W. M. Jillson	5 05
	Draft collections	25
	Dan. Cully	10 00
	Feldhouse, Dutcher & Belden	4 07
	Freight	7 28
	E. W. Blatchford & Co.	157 68
	Gargling oil	50
March 19.	Draft collections	50
	Dan. Cully	2 00
	W. B. Burfort	5 00
	Draft collections	25
	Lath yarn	1 00
March 19.	100 1-cent stamps	1 00
	50 3 " "	1 50
	W. M. Jillson	10 00
	Legal cap paper	25

	Old lead and brass	90
March 20.	" " " "	53
	Dan. Cully	2 00
	Freight	1 26
	John M. Sterling	206 93
	Interest	2 40
	Twine	90
March 21.	Draft collection	53
	Thos. G. Cottrell	6 36
March 22.	Dan. Cully	10 00
	Expense	46
	L. Wolf	100 14
	H. Stacy	21 00
	John Knight	10 00
	John Marshall, per wages	18 00
	Jim Leach, " "	7 50
	Mike Clacy, " "	15 00
	H. Jennings, " "	1 25
	S. Ramsey, " "	2 50
	C. Adams " "	3 75
	W. M. Jillson	33 00
	Dan. Cully	1 00
	Telegram	90
	Bills payable	68 49
March 24.	Crane Bros. M'n'f'g Co.	82 72
	Dan. Cully	5 00
	A. Burdsall	8 65
	Freights	4 52
	Postage stamps	60
March 26.	Express charges	1 75
	Gould M'n'f'g Co.	11 85
	Buckeye Iron and Brass Works	25 00
74	March 27. 100 1-cent stamps	1 00
	Telegram	45
March 27.	Dan. Cully	5 95
	Old lead	8 48
March 28.	E. W. Blatchford & Co.	90
	Express charges	75
	Abendrof Bros.	3 43
	Little Sisters	50
March 29.	H. Jennings, per wages	2 00
	Dan. Cully	10 00
	H. Stacy	21 00
	Jim Leach, per wages	7 50
	C. Adams, " "	5 00
	John Marshall, per wages	18 00
	Mike Cloney, " "	15 00
	Matches	25
	C. O. D.	5 93
	W. M. Jillson	8 90
March 31.	Dan. Cully	5 00

		Freight	1 52
		John Knight	10 00
		Freight	49 98
		"	6 80
		John Knight	58 53
		Freight	50
		W. M. Jillson	10 00
Apilr	1.	Horse shoeing	1 25
		W. M. Jillson	1 25
April	2.	Dan. Cully	5 00
		Reading Iron Works	445 75
		Dan. Cully	4 35
		Express charges	75
		W. M. Jillson	29 00
		100 1-cent stamps	1 00
		100 2 " "	2 00
April	3.	W. M. Jillson	28 94
		Express charges	85
		Freight	1 80
		Wm. Jillson	2 69
		John Knight	4 40
		Dan. Cully	5 20
		Gas bill	1 00
		Commission	2 25
		Dan. Cully	3 00
		John Knight	5 75
		C. Vonnegut	45
		Freight	16 25
		Express charges	2 95
		I. P. Evans & Co.	3 00
		Dan. Cully	2 00
April	5.	Dan. Cully	10 00
		District, Fairbanks & Co.	8 46
		H. Jennings, per wages	2 00
		H. Stacy	21 00
		S. Ramsey, per wages	5 00
		Freight	34
		John Marshall, per wages	18 00
		Jim Leach, per wages	7 50
		W. M. Jillson	2 50
		Journal newspaper	50
		Old lead	75
April	7.	Freight	18 26
		"	2 51
		Dan. Cully	3 00
		Lewis & Deming	54
		Discount on notes	5 00
		J. Giles Smith	154 34
		Walworth M'n'f'g Co.	488 54
		John Knight	10 00
April	8.	Dan. Cully	2 00

		Stamps	30
75	April 8.	W. M. Jillson	2 22
	April 9.	Dan. Cully	5 00
April	9.	C. W. Meikle	36
		Freight	8 06
		Draft collection	25
April	10.	Three couplings	1 26
		Tanner, Sullivan & Talbott	10 59
		John Knight	5 40
		Cincinnati Lead Works	9 80
		Draft collection	84
April	11.	John T. Dickson	25 59
		W. M. Powell	5 33
		Dan. Cully	5 00
		Freight	65
April	11.	Interest on $1,500 63 days	26 25
		Watson Coal Co.	1 01
		Postage stamps	60
		Draft collection	50
April	12.	Dan. Cully	10 00
		Ayres & Brown	100 00
		Interest on $500 93 days	12 91
		" " $1,000 93 days	25 83
		Model Machine Works	200 00
		H. A. Rodgers	34 08
		C. S. Knowles	52 34
		Moore & Kenrick	4 48
		Advertising	5 00
April	12.	Fees	1 00
		Draft coll.	25
		Exchange	10
		Freight	17 20
		H. Stacy	18 75
		John Marshall, for wages	18 00
		Jim Leach, "	7 50
		H. Jennings, "	10 12
		Mike Clacy, "	15 00
April	12.	Postal cards	3 00
		S. Ramsey, for wages	7 50
		W. M. Jillson	5 00
		John Knight	5 00
		Old lead and brass	2 55
April	14.	Draft collections	15
		Dan. Cully	2 00
		H. McSharer & Co.	29 50
		Gould M'n'f'g Co.	47 48
		Draft collections	24
		Telegram	70
		Freight	8 48
		Insurance, 110 S. Delaware St.	52 50
		Freight	3 55
		John Knight	4 00

April	15.	Draft collections	75
		Discount to Gibson	41
		John Knight	105 00
		Insurance, 110 S. Delaware St.	90 00
		Dan. Cully	5 50
		Sam. Marks	6 26
April	16.	Advertising	10 00
		H. Westham & Co.	65 00
		Dan. Cully	5 00
		W. M. Jillson	5 50
April	17.	Draft collection	10
		Baker & Randolph	16 51
		John Knight	2 00
April	18.	Dan. Cully	2 25
		Horace Parott	75 00
		Freight	49 36
		"	2 70
		"	1 28
		M. E. Downey	6 00
		Walworth M'n'f'g Co.	2 55
		Freight	1 82
76	April	18. Red lead	30
		Draft collection	25
April	18.	Repairs on buggy	4 75
		W. M. Jillson	2 30
April	19.	C. A. Blessing	9 30
		Interest on $1,000 for 63 days	17 50
		Dan. Cully	10 00
		Horse medicine	10
		Jim Leach, for wages	7 50
		Jno. Marshall, "	18 00
		M. Clacy "	15 00
		H. Stacy	9 00
		John Knight	25 00
		Cottrell & Knight	3 50
		W. M. Jillson	6 13
April	21.	Freight	7 37
		Mason M'n'f'g Co.	31 15
		W. M. Jillson	1 00
April	22.	Freight	5 89
		Dan. Cully	3 00
		J. Giles Smith	260 00
		T. J. Pope & Bro.	51 13
		Frank Glazier	30
April	23.	S. Ramsey, for wages	11 25
		Dan. Culley	3 00
		Matches	25
		Express charges	65
April	24.	Draft collections	25
		Freight	65
		Dan. Cully	3 00

		Stamps		30
75	April	8. W. M. Jillson	2	22
	April	9. Dan. Cully	5	00
April	9.	C. W. Meikle		36
		Freight	8	06
		Draft collection		25
April	10.	Three couplings	1	26
		Tanner, Sullivan & Talbott	10	59
		John Knight	5	40
		Cincinnati Lead Works	9	80
		Draft collection		84
April	11.	John T. Dickson	25	59
		W. M. Powell	5	33
		Dan. Cully	5	00
		Freight		65
April	11.	Interest on $1,500 63 days	26	25
		Watson Coal Co.	1	01
		Postage stamps		60
		Draft collection		50
April	12.	Dan. Cully	10	00
		Ayres & Brown	100	00
		Interest on $500 93 days	12	91
		" " $1,000 93 days	25	83
		Model Machine Works	200	00
		H. A. Rodgers	34	08
		C. S. Knowles	52	34
		Moore & Kenrick	4	48
		Advertising	5	00
April	12.	Fees	1	00
		Draft coll.		25
		Exchange		10
		Freight	17	20
		H. Stacy	18	75
		John Marshall, for wages	18	00
		Jim Leach, "	7	50
		H. Jennings, "	10	12
		Mike Clacy, "	15	00
April	12.	Postal cards	3	00
		S. Ramsey, for wages	7	50
		W. M. Jillson	5	00
		John Knight	5	00
		Old lead and brass	2	55
April	14.	Draft collections		15
		Dan. Cully	2	00
		H. McSharer & Co.	29	50
		Gould M'n'f'g Co.	47	48
		Draft collections		24
		Telegram		70
		Freight	8	48
		Insurance, 110 S. Delaware St.	52	50
		Freight	3	55
		John Knight	4	00

April	15.	Draft collections	75
		Discount to Gibson	41
		John Knight	105 00
		Insurance, 110 S. Delaware St.	90 00
		Dan. Cully	5 50
		Sam. Marks	6 26
April	16.	Advertising	10 00
		H. Westham & Co.	65 00
		Dan. Cully	5 00
		W. M. Jillson	5 50
April	17.	Draft collection	10
		Baker & Randolph	16 51
		John Knight	2 00
April	18.	Dan. Cully	2 25
		Horace Parott	75 00
		Freight	49 36
		"	2 70
		"	1 28
		M. E. Downey	6 00
		Walworth M'n'f'g Co.	2 55
		Freight	1 82
76 April	18.	Red lead	30
		Draft collection	25
April	18.	Repairs on buggy	4 75
		W. M. Jillson	2 30
April	19.	C. A. Blessing	9 30
		Interest on $1,000 for 63 days	17 50
		Dan. Cully	10 00
		Horse medicine	10
		Jim Leach, for wages	7 50
		Jno. Marshall, "	18 00
		M. Clacy "	15 00
		H. Stacy	9 00
		John Knight	25 00
		Cottrell & Knight	3 50
		W. M. Jillson	6 13
April	21.	Freight	7 37
		Mason M'n'f'g Co.	31 15
		W. M. Jillson	1 00
April	22.	Freight	5 89
		Dan. Cully	3 00
		J. Giles Smith	260 00
		T. J. Pope & Bro.	51 13
		Frank Glazier	30
April	23.	S. Ramsey, for wages	11 25
		Dan. Culley	3 00
		Matches	25
		Express charges	65
April	24.	Draft collections	25
		Freight	65
		Dan. Cully	3 00

		W. M. Jillson	4 26
		Telegrams	60
April	25.	Freight	1 32
		Dan. Cully	3 00
April	26.	W. M. Jillson	12 83
		Draft collections	25
April	26.	Bolt works	95
		Interest on $2,000 for 63 days	35 00
		Belknap M'n'f'g Co.	11 65
		Dan. Cully	10 00
		Jim Leach, per wages	7 50
		M. Clacy, "	10 00
		H. Jennings, "	6 75
		Jno. Marshall, "	18 00
		S. Ramsey, "	3 75
April	28.	John Knight	9 00
		W. M. Jillson	50
		Dan. Cully	3 00
		Two telegrams	1 20
		Postage stamps	1 20
April	29.	Dan. Cully	15 00
		Meyer Liepshitz	9 90
		Eaton, Cole & Burnham	186 92
		Exchange	23
		W. M. Jillson	15 90
April	30.	Dan. Cully	3 00
		John Knight	9 00
		W. M. Jillson	9 00
May	1.	Dan. Cully	3 00
		H. Stacey	50
		John Knight	80 23
		Leopold	28 90
		G. Buckner, wages	2 00
		C. Adams, "	2 00
		C. Wilkinson, "	3 10
		L. B. Jencks, "	10 00
May	2.	Dan. Cully	7 00
		Freight	1 03
May	3.	John Knight	35 04
		Horace Parott	39 44
		W. M. Jillson	37 84
		John Knight	18 90
77 May	3.	Postage stamps	09
		John Knight	1 10
May	3.	John Marshal, wages	18 00
		J. Leach, "	7 50
		S. Ramsey, "	6 25
		H. Jennings, "	4 50
		Dan. Cully, "	5 00
		A. L. Clippenger	52 04
			$5,249 67

Purchases from March 17, 1879, to May 3, 1879.

March 17.	From	Gould M'n'f'g Co.	2 40
		Tanner, Sullivan & Talbott	9 24
		J. G. Smith	8 15
		Walworth M'n'f'g Co.	32 35
		" " "	33 24
		Richmond Stove Co.	12 37
March 18.		Crane Bros. M'n'f'g Co.	5 38
		Gould M'n'f'g Co.	311 33
March 20.		H. McSharer & Co.	39 50
March 21.		A. M. Byers & Co.	873 96
March 22.		Walworth M'n'f'g Co.	22 28
		Rumsey & Co.	81 00
March 24.		A. M. Clapp & Co.	40 50
March 25.		Buckeye Brass M'n'f'g Co.	4 50
March 29.		Wm. Dell	9 60
		Tanner, Sullivan & Talbott	1 35
		Buckeye Brass Works	19 20
		Gould M'n'f'g Co.	10 80
		Peck Bros. & Co.	140 37
		Mooney, Taylor & Smith	2 80
March 31.		" " "	9 00
		Abendroth M'n'f'g Co.	132 24
		Indianapolis brass foundry	33 43
April 1.		Mooney, Taylor & Smith	8 33
		Buckeye Brass Works	30 00
		L. Wolf M'n'fg Co.	154 70
April 5.		American Rubber Co.	37 50
		Buckeye Brass Works	25 60
		Crane Bros. M'n'f'g Co.	11 80
April 7.		" " "	29 65
		Mooney, Taylor & Smith	2 28
		Akron Rubber Co.	73 40
		Walworth M'n'f'g Co.	43 42
		Spang, Chalfant & Co.	849 80
		Hamilton Rubber Co.	50 00
		L. Wolf M'n'f'g Co.	10 24
April 9.		Hamilton Rubber Co.	112 50
April 10.		L. Wolf M'n'f'g Co.	8 50
April 12.		Gould M'n'f'g Co.	64 20
April 14.		Maxwell & Son	118 00
		Eaton, Cole & B. Co.	10 50
		Mooney, Taylor & Smith	9 00
		H. McSharer & Co.	65 00
April 18.		Dawes & Co.	14 40
April 19.		J. H. McGowan & Co.	18 15
April 21.		F. Horsrider	7 67
		Tanner, Sullivan & Talbott	71
April 21.	From	J. G. Murdock & Co.	52 80
April 22.		Wm. Powell & Co.	3 60

		J. G. Murdock & Co.	3 00
		Mooney, Taylor & Smith	54 00
		P. Jewell & Sons	45 57
		Jno. H. McGowan & Co.	14 04
		L. Wolf M'n'f'g Co.	3 18
April	28.	H. McSharer & Co.	21 26
April	29.	Tanner, Sullivan & Talbott	4 73
		Hamilton Rubber Co.	151 25
		Peck Bros. & Co.	88 50
	April 30.	C. A. Blessing	9 25
78	April 30.	Ind'p'l's brass foundry	24 53
		L. Neibacher	19 05
April	30.	Chapman Valve Co.	49 88
		Thos. G. Pope & Bro.	50 83
May	1.	C. Neab	17 74
		Tanner, Sullivan & Talbott	9 82
			$4,113 94

INDIANAPOLIS, *Feb.*, 1882.

We agree that the deposition of George P. Bissell in above case be published at once without asking the master.

HORACE SPEED,
Sol. for Complainants.
TAYLOR, RAND & TAYLOR,
Att'ys for Fletcher & Churchman.

Interrogatories to George P. Bissell by Horace Speed, Counsel for Complainants.

1. What is your name, age, occupation, and residence?
2. How long have you been in that business at Hartford?
3. Did you, in 1879, hold and foreclose a mortgage on real estate belonging to John Knight situate at Indianapolis? If so, in what capacity did you hold it?
4. Did the mortgage show that you held the mortgage as trustee?
5. For whom were you trustee, and where did they live?
6. Had you any authority to accept property in satisfaction of the debt secured by the mortgage?
7. How long would it have taken to obtain that authority, if obtainable at all?
8. Where, if ever, did John Knight propose to you, directly or through any other person, that you should take the property so mortgaged in satisfaction of the mortgage debt?
9. What answer did you make?
10. Where, if ever, was it again proposed?
11. What did you answer then?
12. At what other times, if any, was it proposed, and what answer did you give at such times?

We do not wish to put any cross-interrogatories.

TAYLOR, RAND & TAYLOR,
Att'ys for Fletcher & Churchman.
HEROD & WINTER,
Att'ys for Eliza J. Knight.
AYERS & BROWN,
For John Knight.

Deposition of George P. Bissell, a witness produced and sworn before Henry E. Taintor, a notary public in and for the State of Connecticut, at Hartford, in the county of Hartford and State of Connecticut, on the 3d day of February, 1882.

This deposition is taken on the part of the plaintiffs in a certain action now pending in the United States circuit court for the district of Indiana wherein Pliny Jewell and others are plaintiffs and John Knight and others are defendants.

The said GEORGE P. BISSELL, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Examined upon written interrogatories submitted by plaintiffs, the defendants waiving cross-examination.

Q. What is your name, age, residence, and occupation.

A. My name is George P. Bissell; my age is 50 years; my occupation is that of a banker, and my residence is No. 93 Spring street, in the city of Hartford, county of Hartford and State of Connecticut.

79 Q. 2. How long have you been in that business at Hartford?

A. About thirty years.

Q. 3. Did you, in 1879, hold and foreclose a mortgage on real estate belonging to John Knight, situate at Indianapolis, Indiana; if so, in what capacity did you hold it?

A. I held and foreclosed a mortgage on real estate in Indianapolis, Indiana, against the firm of Cottrell & Knight, said firm consisting of Thomas Cottrell and John Knight. I foreclosed said mortgage in 1879. I held it as trustee.

Q. 4. Did the mortgage show that you held the mortgage as trustee?

A. It did.

Q. 5. For whom were you trustee and where did they live?

A. I was trustee for the holders of twenty-five bonds that were payable to bearer and held by parties residing in various places.

Q. 6. Had you any authority to accept the property in satisfaction of the debt secured by the mortgage?

A. I had no such authority.

Q. 7. How long would it have taken to obtain that authority, if obtainable at all?

A. I cannot tell; it might have taken weeks.

Q. 8. When, if ever, did John Knight first propose to you, directly or through any other person, that you should take the property so mortgaged in satisfaction of the mortgage debt?

A. I do not recollect that he ever made such a proposition, either directly or indirectly. I was in Indianapolis on the 18th of April, 1879, and again on the 28th or 29th of the same month. I have no recollection of seeing Mr. Knight at another time. I do not recollect either a letter from or conversation with Mr. Knight about this matter.

Q. 9. What answer did you make?

A. There being no question that I recollect, I remember no answer.

Q. 10. What did you answer, then?

A. As I remember, there was no occasion for an answer.

Q. 11. At what other times, if any, was it proposed, and what answer did you give at such times?

A. I can only repeat that, to my recollection, the proposition was never made to me at any time.

GEORGE P. BISSELL.

STATE OF CONNECTICUT, } ss:
County of Hartford, }

I, Henry E. Taintor, a notary public in and for the State of Connecticut, residing in said county, hereby certify that the above George P. Bissell was by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause; that his aforesaid deposition was reduced to writing by me; that neither of the parties in the action in which this deposition is taken were present in person or by attorney; that said deposition was taken at the office of the said George P. Bissell, No. 307 Main street, in the city and county of Hartford and State of Connecticut, on the 3d day of February, 1882, between the hours of 4 p. m. and 6 p. m. of the said day.

In testimony whereof I have hereunto set my hand and official seal, at said Hartford, this 3d day of February, A. D. 1882.

[SEAL.] HENRY E. TAINTOR,
A Notary Public in and for the State of Connecticut.

80 And afterwards, to wit, at the November term of said court, on the 8th day of March, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Come now the complainants, by Rooker & Hatch and Horace Speed, their solicitors, and file their exceptions to the master's report herein in the words following, to wit:

Exceptions taken by complainants in this cause to the report made herein on February 22, 1882, by W. P. Fishback, Esq., master in chancery of this court, to whom this cause was referred to take the evidence and report the same, with his findings thereon, to this court by the rule made in such cause —— —, 188–:

First exception. For that the said master has not reported the fatal variance between defendants' several allegations in their

answers as to the nature of the consideration of the alleged sale of goods on May 3, 1879, and the basis thereof and their allegations as developed in the evidence.

And complainants say that said report should show that defendants' answers all allege that the sale was made for the invoice value of said goods, whereas the evidence is that said goods were not invoiced—were transferred without reference to any invoice; that the only approach to an invoice was Knight's guess as to their value, and that they were not taken at that guess, but in satisfaction of the judgment of May 1, 1879.

Second exception. For that the said master has not reported that the collateral note given March 2, 1879, was for the same sum as the face of the original notes, and that said original notes matured later than March 2, 1879, and that therefore the collateral note and the judgment subsequently rendered thereon were not for the same sum as the original notes.

Third exception. For that the said master has not reported that the original notes were not surrendered up at the date of the alleged sale of goods, May 3, 1879, nor until long after, to wit, August 12, 1879, when defendants had a settlement among themselves.

Fourth exception. For that the said master has not reported that said alleged sale of May 3, 1879, was in consideration of and to satisfy the preceding judgment of May 1, 1879, which judgment he has rightly found was in fraud of these complainants.

Fifth exception. For that the said master has not reported that the lien of the execution, which he has rightly found was fraudulent, was still held upon the goods at the time of said alleged sale.

Sixth exception. For that the said master has reported that it was "admitted that any other creditor could have bought Knight's goods and taken them in satisfaction of debts on May 3d," whereas one of the very points most strongly urged by complainants, both at the hearing and in their brief, was that by taking judgment and issuing execution Knight's goods were covered up from his creditors so they could not have levied on them nor bought them of Knight, except under the cloud of the execution, and that until defendants released the lien of their fraudulent execution and satisfied their fraudulent judgment they continued engaged in their fraudulent transaction—continued to be tort-feasors as to all other creditors and could acquire no rights as against them.

81 Seventh exception. For that the said master has not reported that $—— worth of goods were sold by Pliny Jewell & Sons, April —, 1879, to said John Knight while said cognovit was being held, so that Knight could go in business.

Eighth exception. For that said master has not reported that on April —, 1879, said Knight gave P. Jewell & Sons his acceptance, payable June —, 1879, for the bill of goods obtained in February —, 1879, and thereby obtained an extension of credit, preventing them from suing until after the pretended sale, and thereby damaged plaintiffs as deeply and in effect the same as if the goods had been sold at that time.

Ninth exception. For that the said master has not found that as

Fletcher & Churchman and Mrs. Knight held the cognovit at Knight's request so that he could go on in business—they knowing the facts which made every purchase by him on credit a fraud—they thereby became privies or coconspirators with him in the fraud, and—as is the case where a deed is withheld from record to enable the grantor still to have credit—they were estopped from setting up any claim against such grantor until the creditor defrauded is satisfied as to his debt, which could only have been and was intended to be incurred because of such their act.

Tenth exception. For that while the said master has found that the cognovit, judgment, and execution were fraudulent he has not also found that the sale made to satisfy such judgment was also fraudulent.

Eleventh exception. For that the said master has not found that so long as the lien of the fraudulent execution was upon the goods, thereby covering them up from other creditors, the defendants continued to be tort-feasors as to all other creditors, and could not acquire any right as against them.

Twelfth exception. For that the said master has found that upon all the evidence the complainants' bill lacks equity, whereas he should have found that the bill was sustained by the proof, and that the complainants were entitled to a decree in accordance with the prayer of their bill.

In all which particulars the report of the master is, complainants are advised, erroneous, and the said complainants do therefore appeal therefrom to the judgment of this honorable court.

ROOKER & HATCH,
HORACE SPEED,
Sol's and of Counsel for Complainants.

And afterwards, to wit, at the May term of said court, on the 9th day of June, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, and the court, having heretofore heard the argument of counsel, doth sustain the exceptions to the master's report in the above-entitled cause, and said report is hereby overruled.

And come now the defendants, Fletcher and Churchman and Eliza J. Knight, in the above cause, and by their solicitors move the court to recommit said cause to the master with special instructions.

The defendants move the court that the report of the master be recommitted to said master with instructions to find and report the indebtedness of the defendant, John Knight, to each of the plaintiffs in this cause at the date of the alleged fraudulent
82 transfer by said Knight to the defendants, Eliza J. Knight and Francis M. Churchman, and Stoughton A. Fletcher; also the amount of the indebtedness of said John Knight to each of the defendants, Eliza J. Knight and Fletcher & Churchman, at said time; also the amount of the indebtedness of said John Knight at

said time to any and all other persons, with the names of each of such persons and the amounts owing to them, respectively, and the amount of the indebtedness to each of said persons which was contracted after the 17th day of March, 1879; also the amount received by the defendants, Eliza J. Knight and Fletcher & Churchman, or realized by them from the property transferred to them by said John Knight or the value of such property at the time it was received by them, and if from the evidence already taken said master cannot find and report said facts or any of them, then that he take such further evidence as may be necessary to enable him to find and report said facts.

TAYLOR, RAND & TAYLOR,
HEROD & WINTER,
Att'ys for Def'ts.

And afterwards, to wit, on the 20th day of June, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William T. Barbee and files his intervening petition herein in the words following, to wit:

William T. Barbee represents to the court that heretofore, to wit, on the 16th of July, 1877, said John Knight executed to said Barbee, under the style of W. T. Barbee, his certain promissory note in the words and figures following, to wit:

$2,085.00. INDIANAPOLIS, IND., *July 16th*, 1877.

Eighteen months after date I, we, or either of us promise to pay to the order of W. T. Barbee two thousand and eighty-five dollars and five per cent. attorneys' fees, with interest at ten per cent. per annum from date until paid, negotiable and payable at the Indianapolis National Bank, Indianapolis, Ind., value received, without
83 any relief whatever from valuation or appraisement laws.

The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note and all defenses on the ground of the extension of the time of its payment that may be given by the holder or holders to them or either of them.

JOHN KNIGHT.

That said note is long past due and wholly unpaid, except the sum of $500 paid on Feb'y 22nd, 1879; that the narrator recovered judgment on said note June 27th, 1882, in cause No. 29548 in the superior court of Marion county, Indiana, for $2,681.16, and costs, taxed at $7.40, without relief, and on the 30th day of June, 1882, execution was duly issued thereon to the sheriff of said county, who on the same day made return thereon of "no property;" which said costs the said plaintiff has paid; and said Barbee now prays the court for permission to file this his intervening petition in this cause and share in the trust fund held or which may be held

by this court—the proceeds of the property of said Knight turned over by him to the other defendants in this cause, as stated in the bill of complaint herein.

WILLIAM T. BARBEE,
By JOHN R. WILSON,
His Attorney.

JOHN R. WILSON, *Of Counsel.*

And afterwards, to wit, on the 22nd day of June 1882, at the May term of said court, before the Honorable Walter Q. Gresham,
84 judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the Connecticut Mutual Life Insurance Company, by Sullivan and Beck, its solicitors, and files its intervening petition herein in the words following, to wit:

(The above petition is not upon the files.)

85 And afterwards, to wit, on the 24th day of June, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now A. M. Byers, by Horace Speed, his solicitor, and files his intervening petition herein in the words following, to wit:

A. M. Byers and E. M. Byers, copartners under the firm name of A. M. Byers & Co., represented to the court that theretofore, to wit, at the dates therein given these narrators, by their said firm name, drew two drafts on said John Knight, which he accepted by writing across the face of each; which drafts and acceptances were in the words and figures following, to wit:

PITTSBURGH, *Feb'y 26th*, 1879.

Four months after date pay to the order of ourselves seven hundred and thirty-one $\frac{10}{100}$ dollars, value received, with exchange on New York, and charge the same to account of—

$731.10. A. M. BYERS AND CO.

Mr. John Knight, Indianapolis, Ind.

PITTSBURGH, *March 21st*, 1879.

Four months after date pay to the order of ourselves eight hundred and seventy-three $\frac{96}{100}$ dollars, value received, with exchange on New York, and charge the same to account of—

86 $873.96. A. M. BYERS AND CO.

Mr. John Knight, Indianapolis, Ind.

That said drafts are due, with interest thereon from the date of maturity of each, and wholly unpaid, and said narrators now pray the court for permission to file this their intervening petition in this cause and share in the trust fund held or which may be held by this court—the proceeds of the property of said John Knight fraudu-

lently turned over by him to the other defendants in this cause as stated in the bill of complaint herein.

A. M. BYERS,
E. M. BYERS,
By HORACE SPEED,
Their Solicitor.

HORACE SPEED, *Solicitor and of Counsel.*

87 And afterwards, to wit, at the May term of said court, on the 29th day of June, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, Francis M. Churchman, by his solicitors, and come also the complainants, by their solicitors, and the court having already announced its finding in favor of complainants, suggests to the court that on the — day of February, 1882, his codefendant, Stoughton A. Fletcher, sold his interest in the firm of S. A. Fletcher & Co. to Stoughton J. Fletcher, and thereafter died testate, confirming by his will the sale aforesaid; and thereupon the defendant, Churchman, moved the court that the said Stoughton J. Fletcher be substituted as a defendant in this suit in the place of said Stoughton A. Fletcher, which motion is overruled.

And afterwards, to wit, on the 3d day of July, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Hamilton Rubber Company and Blatchford and Company, by Horace Speed, Esq., their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

The Hamilton Rubber Company, a corporation organized and existing under the laws of the State of New Jersey, represent to the court that on May 14, 1879, said John Knight executed, in payment for goods theretofore sold him by the narrator, as set forth in Exhibit B, hereto attached as part hereof, to the narrator his certain promissory note for $282.21, at one year, with 7 % interest until paid, and 10 % attorneys' fees, in the words and figures following, to wit:

$282.21. INDIANAPOLIS, IND., *May 14th*, 1879.

One year after date I promise to pay to the order of John Knight two hundred and eighty-two $\frac{21}{100}$ dollars, and 10 per cent. at-
88 torneys' fees, with interest at seven per cent. from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

JOHN KNIGHT.

Endorsed: John Knight.

That said note is long past due and wholly unpaid.

And this narrator now prays the permission of this court to file this their intervening petition in this cause, and share in the trust fund held or which may be held by this court, the proceeds of the property of said John Knight turned over by him to the other defendants in this case, as stated in the bill of complaint herein.

And this petitioner further prays that the defendants be required to bring into court the value of the property so turned over for the satisfaction of this petitioner's debts, and for all further and other proper relief.

HAMILTON RUBBER COMPANY,
By HORACE SPEED, *Its Att'y.*

HORACE SPEED,
Sol'r and of Counsel.

Note dated May 14th, 1879. 1 y'r. Interest added, at 7 %, $263.75 = $282.21.

89 Duplicate.

TRENTON, N. J., *July 19th*, 1882.

Mr. John Knight, Indianapolis, Ind., bought of Hamilton Rubber Company, manufacturers of hose, belting, packing, car springs, wagon springs, caskets, &c.

1879.				
April 9.	1,000 ft. ¾″ 3 D. K. hose, .30		300	
	Grade 18″, 75%		225	
				75
	2 bales P. R. R.			
10.	500 ft. ¾″ 3 H. K. hose, .30		150	
	Grade 18xx, 75%		112 50	
				37 50
	1 bale P. R. R.			
29.	500 ft. 1″ 3 D. K. hose, .40		200	
	500 " 1″ 2	.33	165	
	200 " 1″ 4	.50	100	
	200 " ½″ 3	.20	40	
	200 " 1¼″ 3	.50	100	
			605	
	Grade 18xx, 75%		453 75	
	3 bales P. R. R.			
				151 25
				$263 75

And said intervening petition of E. W. Blatchford & Co. is in the words following, to wit:

Eliphalet W. Blatchford and Caleb F. Gates, copartners under the name of E. W. Blatchford & Co., represent to the court that theretofore, to wit, on the first day of March, 1879, said John Knignt, in

payment for goods theretofore bought by him of the narrators,
90 as set forth in a bill of particulars, hereto attached, marked "Exhibit B," as part hereof, executed to these narrators under said firm name, his certain promissory note for $1,006.66, at 90 days, with 10% interest after maturity, and attorney's fees (a copy of which note is filed herewith as part hereof, marked "Exhibit A"); that said note is long past due and wholly unpaid; and that thereafter, to wit, on the 20th day of May, 1879, said John Knight executed his certain other promissory note for $267.83, at 1 year, with interest and attorney's fees, to these narrators, under their firm name, the consideration of both notes having arisen before May 3d, 1879. A copy of said note, marked "Exhibit B," is attached hereto as part hereof, which note is long past due and wholly unpaid.

And these narrators now pray the permission of this court to file this their intervening petition in this cause and share in the trust fund held, or which may be held, by this court—the proceeds of the property of said Knight, turned over by him to the other defendants in this cause, as stated in the bill of complaint herein.

And these petitioners further pray that the defendants be required to bring into court the value of the property so turned over for the satisfaction of these petitioners' debts, and for all other and further proper relief.

ELIPHALET W. BLATCHFORD,
CALEB F. GATES,
By HORACE SPEED, *Their Att'y.*

HORACE SPEED,
Sol'r and of Counsel.

91 "EXHIBIT A."

$1,006.66. INDIANAPOLIS, IND., *March 1st*, 1879.

Ninety days after date I promise to pay to the order of E. W. Blatchford & Co. ten hundred and six and $\frac{66}{100}$ dollars and ten per cent attorney's fees, with interest at ten per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

"EXHIBIT B."

$267.83. INDIANAPOLIS, *May 20th*, 1879.

One year after date I promise to pay to the order of E. W. Blatchford & Co. two hundred sixty-seven & $\frac{83}{100}$ dollars, at Fletcher's Bank, Indianapolis, Ind., value received.

JOHN KNIGHT.

"EXHIBIT B."

CHICAGO, —— —, 188–.

Mr. John Knight, Indianapolis, Ind., to E. W. Blatchford and Co., Dr., corner of Clinton and Fulton Sts., west side.

1879.				
M'ch 4.	Mdse.	91 26		
" " "	"	576 70		
" 24.	"	35 67		
Ap'l 8.	"	386 68		
" 18.	"	160 00		
				1,250 31
92	Int. on note	6 66		
	" " "	17 52		
				24 18
				1,274 49
	Note	1,006 66		
	"	267 83		
				1,274 49

CHICAGO, *Ap'l 18th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of E. W. Blatchford and Co., 70 North Clinton St.

4 cils., 1 ex. st.	753			
3 " 1¼ "	461			
2 " 1 st.	383			
2 " 1¼ "	373			
2 " 1¼ ln.	350			
2 " 1½ "	367			
	——	2687#	4	107 48
2 rolls 4xx fur'd	1167xx	4½	52	52
				160 00

CHICAGO, *Ap'l 8th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of E. W. Blatchford and Co., 70 North Clinton St.

6 cils., ½ ex. st.	1012			
10 cils., ⅝ ex. st.	1955			
93 4 " ⅝ st.	798			
3 " 1 ln.	545			
4 cils., 1 ex. ln.	717			
	——	5027#	4.30	216 16
1 roll en. 2½xx, 3xx, 4xx, 6xx, 8xx pend.		3311xx	5.15	170 52
				386 68

CHICAGO, *M'ch 24th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of E. W. Blatchford and Co., 70 North Clinton St.

100 ft. 1½, ex. ln.	751#	5½	41	30
Less			5	63
			35	67

CHICAGO, *M'ch 4th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of E. W. Blatchford and Co., 70 North Clinton St.

3 cils., ½ st'g	514			
4 " ⅝ & ¾ st'g	1580			
4 " 1 "	756			
3 " ½ & ⅝ med.	1027			
3 " ¾ & 1 "	1103			
4 " ½ & ⅝ ex. st'g.	1456			
4 " ¾ & 1 "	1386			
2 " ⅜ "	332			
3 " 2 & 1½ "	1007			
4 " 1¼ "	704			
2 " 2 ln.	343			
3 " 1½ "	535			
4 " 1¼ "	701			
2 " ⅜ med. & st'g	697			
	12141#	4¾	576	70

94 CHICAGO, *March 4th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of E. W. Blatchford and Co., 70 North Clinton St.

21 pigs Ourelu le-d	2019#	4.52	91	26

95 And afterwards, to wit, at the May term of said court, on the 4th day of July, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Francis M. Churchman, by his solicitors, and also come the complainants, by their solicitor, and said Churchman moves the court to recommit this cause for reasons specified in said motion; and the court being advised in the premises overrules said motion.

And afterwards, to wit, on the 19th day of July, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Peck Bros. and Company, by J. E. Florea, Esq., their solicitor, and file their intervening petition herein in the words following, to wit:

Peck Bros. and Company, a corporation duly organized and existing in and acting under the laws of the State of Connecticut,

respectfully represent to the court that heretofore, to wit, at the date thereon given, said John Knight executed to said Peck Bros. and Co. his certain promissory note for two hundred and forty-six & $\frac{25}{100}$ dollars, which is in the words and figures following, to wit:

$246.25. INDIANAPOLIS, IND., *May 16th*, 1879.

One year after date I promise to pay to the order of Peck Bros. and Co. two hundred and forty-six and $\frac{25}{100}$ dollars and ten per cent. attorney's fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever
96 from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

That said note was given in settlement for goods, wares, and merchandise sold and delivered by Peck Bros. and Co. to said John Knight at his instance and request on and before the 1st day of May, 1879; that said note is due with interest thereon from date, with attorney's fees, all of which remain wholly unpaid; and said narrator now prays the court for permission to file this their intervening petition in this cause and share in the trust fund held or which may be held by this court—the proceeds of the property of said John Knight fraudulently transferred over by him to the other defendants in this cause, as stated in the bill of complaint.

PECK BROS. AND CO.,
By JOSH. E. FLOREA, *Solicitor.*

JOSH. E. FLOREA,
Solicitor and Counsel.

And afterwards, to wit, on the 26th day of July, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Walworth Manufacturing Company, the
97 Gould Manufacturing Company, and Joshua Rhodes, by Horace Speed, Esq., their solicitor, and file their separate and respective intervening petitions herein in the words following, to wit:

Intervening Petition of Walworth Manufacturing Company.

The Walworth Manufacturing Company, a corporation organized and existing under the laws of the State of Massachusetts and a citizen of said State, represents to the court that between January 15th, 1879, and April 4th, 1879, the defendant, John Knight, bought of this narrator on credits, averaging June 1st, 1879, as maturity, goods and merchandise to the value of $545.64, and on the 3d day of February, 1879, accepted two drafts drawn on him by the narrator for $488.54 each, due at 90 and 120 days, respectively; a bill of particulars of which purchases and copies of said drafts are filed here-

with as parts hereof, marked "Exhibits A, B, and C," respectively; that said bill and drafts are each long past due, with interest thereon from maturity of each, and wholly unpaid.

Wherefore the narrator prays leave to file this its intervening petition in the above-entitled cause and to share in the trust fund arising in this cause to the creditors of said Knight, and for all other and proper relief.

WALWORTH MANUFACTURING CO.,
By HORACE SPEED, *Its Solicitor.*

HORACE SPEED, *Of Counsel.*

98 EXHIBIT A.

BOSTON, —— —, 188–.

Mr. John Knight bought of Walworth Man'f'g Co., No. 69 Kilby street.

1879.				
Jan. 15	1 3 x 20 radiator = 60 tubes, 28		16 80	
	100 nickel-plated air-valves, $\frac{1}{8}$, 19½		19 50	
	Bag		20	
				36 50
" 20	110 lbs. mall, B, 12	13 20		
	335 " C, 10	33 50		
	299 " D, 9	26 91		
		73 61		
	23 %	16 93		
			56 68	
	Bbl., 30; half do., 40; keg, 20		90	
	6 flange unions, 2½, 2.50	15		
	72½	10 87		
			4 13	
	3 glo. angle valves, 2, 1.35		4 05	
	24 " " 1, 63		15 12	
	12 " " ¾, 45		5 40	
	6 # 1 C. H. pipe-cutters, 6.50	39		
	6 # 2 " 8	48		
		87		
	30	20 11		
			60 90	
	6 L. H. dies, ¾ x 1, 2	12		
	12 " 1 x 1, 2	24		
	12 R. H. ⅛ x 1, 2	24		
		60		
	60	36		
			24	
	6 10″ Still m.-wrenches, 2.25	13 50		
	6 14″ " 3	18		
	6 18″ " 4	24		
		55 50		
	25	13 87		
			41 63	
	Box, 25; half bbl., 40; cartage, 25		1 03	
				213 84

Feb. 1	Interest on note			34 20
20	2 C. T. elbows, 5, 96 net		1 92	
	2 " 3, 33 "		66	
	1 " 2½ x 2 "		20	
	8 plugs, 1, 1¾		14	
	2 " 1½, 2¾		06	
	10 couplings, 2 R. H., 45	4 50		
	2 " 3½ " 1.30	2 60		
	(Over)	7 10	2 98	284 54
99	(Over)	7 10	2 98	284 54
	2 couplings, 5, 2.80	5 60		
	4 C. T. tees, 3, 42 n.		1 68	
	4 " 3 x 2, 42 n.		1 68	
	1 " 3 x 2½, — n.		42	
	10 nipples, 3, 16 n.		1 60	
	1 flang- union, 2	2 10		
		14 80		
	72½	10 73		
			4 07	
	4 walnut vises, 18	72		
	35 %	25 20		
			46 80	
	Cartage		38	
				59 61
M'ch 4	37 ft. pipe, 3½, 80	29 60		
	56 6/12 " 2, 31	17 52		
	18 " 1½, 32	3 96		
	49 " 1¼, 18	8 82		
		59 90		
	67½	40 42		
				19 48
8	72 Scotch glass tubes, ⅝ x 12, 45	32 40		
	36 " " ⅝ x 10, 40	14 40		
	24 " " ⅝ x 10, 55	13 20		
		60		
	80	48		
		12		
	10	1 20		
			10 80	
	3 p'rs Reeron's tongs, # 1, 3	9		
	3 " " " 1½, 3.50	10 50		
	3 " " " 2, 4	12 00		
	3 " " " 3, 5	15		
		46 50		
	40	18 60		
			27 90	
	2 boxes, 75; cartage, 38		1 13	
				39 83
17	2 # 1 packer ratchets, 10 50	21		
	2 # 2 " " 13.50	27		
	1 # 3 " "	16		
		64		
	50	32		
			32 00	
	Box		35	
				32 35

M'ch 17	50 bushings, $\frac{3}{8}$ x $\frac{1}{4}$, $1\frac{1}{4}$		63	
	25 " $\frac{1}{2}$ x $\frac{1}{4}$, $1\frac{3}{4}$		44	
	50 " $\frac{3}{4}$ x $\frac{1}{2}$, 2		1	
	50 " 1 x $\frac{3}{4}$, 3		1 50	
	6 " 4 x 3, 30		1 80	
	12 lock-nuts, 3, 75	9		
	$72\frac{1}{2}$	6 52		
			2 48	
	75 lb-. mall, D, 9	6 75		
	162 " " C, 10	16 20		
	74 " " B, 12	8 88		
		31 83		
	23	7 32		
			24 51	
	Bbl., 50; cart'g-, 38		88	
				33 24
	(Over)			469 05
100	(Over)			469 05
M'ch 22	1 # 3 packer ratchets	16		
	50	8		
			8 00	
	$\frac{1}{2}$ doz. n.-plated S. C. basin cocks, T handle on top, $42	21 00		
	35	7 35		
			13 65	
	Box, 25; cartage, 38		63	
				22 28
Ap'l 4	165 l-. malv., D, 9	14 85		
	115 " E, 10	11 50		
	155 " B, 12	18 60		
		44 95		
	23	10 33		
			34 62	
	12 C. S. elbows, $3\frac{1}{2}$, 51		6 12	
	100 " plugs, $\frac{3}{4}$, $1\frac{1}{4}$		1 50	
	4 1 x 12 radiators, 48 tubes, 28		13 44	
				56 86
				548 19
	Less allowance on freight			2 55
				545 64

Also two notes.

EXHIBIT B.

(Copy.)

$488.54. INDIANAPOLIS, *Feb'y 3d*, 1879.

To John Knight, Indianapolis, Ind.:

Ninety days after date pay to the order of the Walworth Manufacturing Co. four hundred eighty-eight and $\frac{54}{100}$ dollars, value received, and charge the same to account of—

WALWORTH MANU'F'G CO.,

No. 346. E. C. HAMMER, *Treas.*

Protested May 7th, '79. J. E., *N. P.*

Accepted Feb'y 3d, 1879. JOHN KNIGHT.

101 EXHIBIT "C."

(Copy.)

$488.54. INDIANAPOLIS, *Feb'y 3d*, 1879.

To John Knight, Indianapolis, Ind.:

One hundred and twenty days after date pay to the order of the Walworth Manufacturing Co. four hundred and eighty-eight and $\frac{54}{100}$ dollars, value received, and charge the same to account of—

WALWORTH MANUFACTURING CO.
E. C. HAMMER, *Treas.*

No. 347.

Accepted Feb'y 3d, 1879.

JOHN KNIGHT.

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } *ss:*

George L. Rice, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, being duly sworn, on oath deposes and says that he is assistant treasurer of the Walworth Manufacturing Company, a corporation duly established under the laws of said Commonwealth of Massachusetts and having its usual place of business in the city of Boston.

That John Knight, of Indianapolis, in the State of Indiana, is justly and truly indebted to said corporation in the sum of five hundred and forty-five $\frac{64}{100}$ dollars for goods, wares, and merchandise sold and delivered by said corporation to the order of said John Knight and at his request, at or about the dates, at the prices, and on the terms as set forth on the account hereto annexed, together with and including, as in said account appears, an item for
102 interest due on a note made by said Knight, and also certain incidental charges upon the sale and delivery of said goods as therein set forth; and said account is a correct copy and transcript from the books of said corporation of entries made at or about the said dates, and the prices therein charged are the just and proper prices for said goods; also upon two certain drafts or bills of exchange drawn by the said Walworth Manufacturing Company upon said Knight, both dated Indianapolis, Feb'y 3d, 1879, payable to the order of said company, viz., one in ninety days from said date and the other in one hundred and twenty days from said date, each for the sum of four hundred and eighty-eight $\frac{54}{100}$ dollars, and accepted by said Knight, copies of which drafts are also hereto annexed; and also for the costs and charges of protest of the former of said drafts, viz., $1.53. And said corporation has received no payment thereon, nor has any person to its use, and holds no security for such payment; and there is no offset or defense to the same except by an unsettled claim of the said John Knight against said corporation for the sum of about five hundred dollars, and the full amount of $545.64, as in said account annexed set forth, and also the full amount of said drafts,

with said costs and charges of protest, viz.	$977 08
And said sum of	1 53
	$978 61

103 together with interest on the same from their maturity, making in all the sum of fifteen hundred and twenty-six $\frac{25}{100}$ dollars ($1,526.25), with interest as aforesaid, is justly due and owing from said John Knight to said corporation after the allowance of all credits and discounts, subject, however, to the deduction therefrom of the claim of said John Knight above referred to.

GEO. L. RICE,
Ass't Treasurer.

COMMONWEALTH OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } *ss:*

Subscribed and sworn to in said city of Boston this twenty-first day of July, 1882, before me, Samuel Jennison, a commissioner of the State of Indiana, residing in said Boston, duly commissioned and qualified to take affidavits, &c., for said State.

In witness whereof I have hereunto set my hand and official seal at said Boston this 21st day of July, 1882.

[SEAL.] SAMUEL JENNISON,
Commissioner for Indiana in Boston.

And said intervening petition of the Goulds Manufacturing Company is in the words following, to wit:

The Goulds Manufacturing Company, a corporation organized and existing under the laws of the State of New York and a citizen of said State, represents to the court that heretofore, to wit, on the 15th day of February, 1879, the defendant, John Knight, accepted
104 a draft drawn on him by the narrator for $253.12 at 90 days after date; and afterward, between March 17th, 1879, and April 30th, 1879, both inclusive, bought of the narrator goods and merchandise to the value of $393.05 on credits of 60 days, a copy of which draft and a bill of particulars of which purchases are filed herewith as part hereof, marked Exhibits "A" & "B," respectively; that said draft and said account, the latter averaging due June 1st, 1879, are both due and wholly unpaid.

Wherefore the narrator prays leave to file this its intervening petition in the above-entitled cause and to share in the trust fund arising in this cause to the creditors of said Knight, and for all other proper relief.

GOULDS MANUFACTURING CO.,
By HORACE SPEED, *Its Att'y.*

HORACE SPEED, *Of Counsel.*

$253.12. INDIANAPOLIS, *Feb'y 15th*, 1879.

To John Knight, Indianapolis, Ind.:

Ninety days after date pay to the order of the Goulds Manufacturing Company two hundred and fifty-three & $\frac{12}{100}$ dollars, value received, and charge the same to account of—

J. H. GOULD, *Treas.*

Accepted Feb'y 15th, 1879.

JOHN KNIGHT.

105 SENECA FALLS, N. Y., —— 187–.

Mr. John Knight, Indianapolis, bought of the Goulds Manufacturing Co.

1879.				
March 17.	1 cylinder #10, Fig. 307		4 00	
	40%		1 60	
				2 40
" 18.	12 "each" #1, 4.25; #3, 5.25; Fig. 205	114 00		
	18 #2, Fig. 475	85 50		
	12 bot. nuts for 1¼, Fig. 35	4 20		
		203 70		
	55 & 10%	121 20		
			82 50	
	12 #4, Fig. 212, @ 8.50	102 00		
	12 #4 " 215, " 8.25	99 00		
	12 #4 " 207, " 8.50	102 00		
	25 "each" bot., 75c., & top, 50c., att'ch 3, Fig. 212	31 25		
	6 "each" 3, bot., 4.00, & 2¾, 3.75, Fig. 609	46 50		
	12 "each" top, 50c., & bot., 75c., att'ch, Fig. 212, 2¾	15 00		
	3 "each" stocks, only 3, 2.40, & 4, 2.60, Fig. 207	15 00		
		410 75		
	50 & 10%	225 91		
			184 84	
	3 #2, Fig. 305, @ 12.50	37 50		
	3 #10 " 307, " 14.50	43 50		
		81 00		
	40 & 10%	37 26		
			43 76	
	1 bbl.		25	
				311 33
" 27.	1 #5, Fig. 485		18 00	
	40%		7 20	
				10 80

April 12.	1 #4, Fig. 283, mounted on 4-wheeled truck, with 4-in. suc. & dis.	107 00	
	40%	42 80	
			64 20
" 30.	1 base #1, two-cyl. force-pump	8 00	
	40 & 10%	3 68	
			4 32
			393 05

106 STATE OF NEW YORK, } ss:
County of Seneca, }

James H. Gould, being duly sworn, says he is treasurer of the above-named The Goulds Manufacturing Company, a corporation; that the foregoing account is just, true, and correct, and is justly due and owing to the said The Goulds Manufacturing Company from the said John Knight; that no judgments have been made thereon, and there are no offsets thereto, but the whole sum of $393.05 is due.

JAMES H. GOULD.

Sworn to before me this 24th day of July, 1882.
[SEAL.] CHARLES A. HAWLEY,
Notary Public.

And said intervening petition of Joshua Rhodes is in the words following, to wit:

Joshua Rhodes, doing business under the name of Joshua Rhodes & Co., represents to the court that on February 10th and 17th, 1879, the defendant, John Knight, bought of the narrator, on credits of 60 days goods and merchandise, to the value of $369.08, and thereafter, to wit, on the 13th day of August, 1880, said Knight executed to the narrator, as *as* evidence of such indebtedness and the accrued interest thereon, *he executed* his promissory note for $381.95, bills of particulars of which sales and a copy of said note are filed herewith as part hereof, marked "Exhibits A, B, & C," respectively.

107 That said debt is long past due, with interest thereon, $381.95, from May 13th, 1881, with $1.53 protest fees on said note, protested at maturity.

Wherefore the narrator prays leave to file this his intervening petition in the above-entitled cause, and to share in the trust fund arising in this cause to the creditors of said Knight, and for all other and proper relief.

JOSHUA RHODES,
By HORACE SPEED,
His Solicitor.

HORACE SPEED, *Of Counsel.*

EXHIBIT A.

Duplicate.

PENNSYLVANIA TUBE WORKS,
PITTSBURGH, *Feb'y 10th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of Joshua Rhodes & Co.

Terms, 60 days.

		Feet.	*Inches.*	*Price.*	
1 bal. $\frac{1}{8}$″ black pipe		514	0	6	30 84
20 " $1\frac{1}{4}$″ " "		1,009	1	18	181 63
59 pcs. $1\frac{1}{2}$″ " "		1,011	10	22	222 60
59 " 2″ " "		1,008	8	31	312 69
18 " 3″ " "		307	5	60	184 45
					932 21
70%					652 55
					279 66

W'g't, 11,100 lb, @ 23c.

108 EXHIBIT B.

Duplicate.

PENNSYLVANIA TUBE WORKS,
PITTSBURGH, *Feb'y 17th*, 1882.

Mr. John Knight, Indianapolis, Ind., bought of Joshua Rhodes & Co.

Terms, 60 days.

	Feet.	*Inches.*	*Price.*	
15 pcs. $2\frac{1}{2}$″ black pipe	281	8	46	129 57
9 " 4″ " "	168	6	1 00	168 50
				298 07
70%				208 65
				89 42

W'g't, 3,040 lb, @ 23c.

PENNSYLVANIA TUBE WORKS,
PITTSBURGH, *July 20th*, 1882.

Mr. John Knight, Indianapolis, Ind., in account with Joshua Rhodes and Co.

Terms, 60 days.

1879.			
Feb'y 10.	To mdse.	254 13	
17.	" "	82 42	
	Int. to maturity of note dated Aug. 13th, '80, @ 9 months	45 40	
			381 95
1880.			
Aug. 23.	By note		381 95
	Protest		1 53
	Interest to July 15th, '82		26 84
	Above note protested		410 32

109 EXHIBIT C.

$381.95. INDIANAPOLIS, IND., *Aug. 13th*, 1880.

Nine months after date I promise to pay to the order of Joshua Rhodes & Co. three hundred and eighty-one and $\frac{95}{100}$ dollars at —— without defalcation, value received.

JOHN KNIGHT.

UNITED STATES OF AMERICA, *State of Indiana*, } *To wit:*

Be it known that on Monday, the 16th day of May, in the year of our Lord one thousand eight hundred and eighty-one, I, Jonathan Elliott, notary public, by lawful authority duly commissioned and sworn, living in Indianapolis, in the county of Marion and State aforesaid, at the request of J. C. McCutcheon, cash'r First Nat. B'k, Indianapolis, Indiana, holders of the original promissory note hereto attached, after the close of bank hours presented the same at the office of John Knight, Indianapolis, Indiana, and demanded payment thereof, the time limited for payment having expired, whereto I was answered (by book-keeper): "Cannot pay."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer and endorsers of said note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered or to be suffered for the want of payment of said note, and addressed written notices thereof to the endorsers
110 of the same, and informing them that they are held liable for the payment of said note; and on the same day, in the evening, I deposited such notices, post-paid, in the post office at the city of Indianapolis, inclosed and addressed "W. McCandless, cashier, Allegheny National Bank, Pittsburgh, Pa."

15—48

This done and protested at Indianapolis the day and year above written.

In testimony whereof I grant these presents under my signature and impress of my notarial seal.

[SEAL.] JONATHAN ELLIOTT,
Notary Public.

Fees:		
Protest	50	
Record	50	
2 notices	50	
Postage	03	
Total	1 53	
Interest	26 84	to July 15.
Note	381 95	
Total	410 32	

And afterwards, to wit, on the 14th day of August, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now. B. F. Goodrich and Company, by J. E. Florea, Esq., their solicitor, and file their intervening petition herein in the words following, to wit:

111 The B. F. Goodrich Co., a corporation duly organized and existing in and under the laws of the State of Ohio, respectfully represents to the court that heretofore, to wit, on the 20th day of January, 1879, said B. F. Goodrich Co. made a draft on John Knight for the sum of one hundred and twenty nine & $\frac{68}{100}$ dollars, payable in six months to the order of said narrators, which said draft was accepted in writing by said John Knight on the 6th day of March, 1879, all of which is in the words and figures following, to wit:

"AKRON RUBBER WORKS,
$129.68. AKRON, OHIO, *January* 20th, 1879.

To John Knight, Indianapolis, Indiana:

Six months after date pay to the order of ourselves one hundred and twenty nine and $\frac{68}{100}$ dollars, with current rate of exchange on N. Y.

B. F. GOODRICH CO.

Accepted March 6th, 1879.

JOHN KNIGHT."

That said draft is due, with interest thereon from maturity, and remains wholly unpaid.

And your narrators further show to the court that said John Knight is indebted to them the sum of seventy three and $\frac{40}{100}$ dollars for goods, wares, and merchandise sold and delivered by said narrators, at said John Knight's special instance and request,

on the 7th day of April, 1879, a bill of particulars of which is filed herewith and made part hereof, marked "Exhibit A." all of which is due, with interest thereon after sixty days from the date of said purchase, all of which is unpaid; and said narrators now
112 pray the court for permission to file this their intervening petition in this cause and share in the trust fund held, or which may be held, by this court, the proceeds of the property of said John Knight, fraudulently transferred over by him to the other defendants in this cause, as stated in the bill of complaint.

B. F. GOODRICH CO.,
By JOSH. E. FLOREA,
Their Solicitor.

JOSH. E. FLOREA,
Solicitor & Counsel.

AKRON, O., *May 15th*, 1879.

John Knight, Indianapolis, to Akron Rubber Works, B. F. Goodrich and Co., Dr.

April 7, 1879.	60 ft. 4″ 2-ply hose, .35		21 00
"	16 " 4″ suction hose, 2.90		52 40
			$73 40

Above find statement of account for comparison with your books to see that we agree. If not correct please advise us at once.

Respectfully yours, B. F. GOODRICH AND CO.

THE STATE OF OHIO, } *ss:*
Summit County, }

Before me, a notary public in and for said county, personally appeared Louis K. Jones, who, being duly sworn, says that he is bookkeeper for B. F. Goodrich & Co., the owners of the account hereto attached; that said claim is correct, just, and lawful, as above
113 stated; that no part of the same has been paid except as stated thereon; that there are no counter-claims or set-offs against the same, to the knowledge of affiant, and that there is justly due to the said B. F. Goodrich & Co. thereon the sum of seventy-three & $\frac{40}{100}$ dollars, and that they hold no security therefor whatever.

LOUIS K. JONES.

Sworn to before me and signed in my presence by said Louis K. Jones this 17th day of May, 1879.

[SEAL.] R. P. MARVIN, JR.,
Notary Public, Summit County, Ohio.

114 And afterwards, to wit, at the May term of said court, on the 16th day of August, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Alexander M. Byers and Ebenezer M. Byers, partners as A. M.

Byers & Co.; Joshua Rhodes, Eliphalet W. Blatchford, and Charles F. Gates, partners as E. W. Blatchford & Co.; the Hamilton Rubber Co., a corporation; the Gould Manufacturing Co., a corporation; William T. Barbee, Peck Bros. & Co., a corporation; the Connecticut Mutual Life Insurance Company, a corporation; the L. Wolfe Manufacturing Company, a corporation, and the B. F. Goodrich Company, a corporation, by their solicitors, *and* represent that they are creditors of said John Knight and ask leave to intervene herein and prove the amount of their respective claims; also come the respondents, by their solicitors, and object to leave being granted on the ground that the bill herein is for the benefit of complainants only, which objection is overruled, and said creditors are allowed to file their intervening petitions and become parties to the suit, with the right to prove the amount due them, respectively, and they now file their intervening petitions as follows:

115 And said intervening petition of L. Wolff Manufacturing Company is in the words following, to wit:

Comes now the L. Wolff Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois, and says that said John Knight is indebted to said company for goods and merchandise sold and delivered by said company to him, at his special instance and request, prior to May 1st, 1879, a bill of particulars of which is filed herewith as part hereof and marked "Exhibit A;" that the same remains due and wholly unpaid and that interest is due thereon from July 1st, 1879; that said Knight is wholly insolvent, and said company now prays to be made a party to this suit and allowed to share in the fund arising in this cause, and for all proper relief.

L. WOLFF MANUFACTURING CO.,
By HORACE SPEED, *Its Solicitor.*

HORACE SPEED, *Of Counsel.*

CHICAGO, *July 22d*, 1882.

Mr. John Knight, Indianapolis, Ind., in acc't with L. Wolff Man'f'g Co., 93–111 West Lake St.

1879.		Acc't rendered:		
Feb'y	19.	Mdse.	$138 90	
March	25.		7 00	
April	1.		154 70	
	10.		9 00	
	7.		10 24	
	22.		3 18	
			323 02	
		CR.		
	18.	By disc. on boiler	50	
				$322 52

116 And afterwards, to wit, later on said day, the following further proceedings in the above-entitled cause were had, to wit:

This cause came on to be heard upon the complainants' exceptions to the master's report and was argued by counsel, and thereupon, upon consideration thereof and upon the evidence in said cause, the court finds—

That said exceptions are well taken and sustained, and that the equity of said cause is with the complainants, and that there is due the complainants, Pliny Jewell and his partners named in the bill, the sum of four hundred and forty dollars and twenty cents, with interest thereon from the 23d day of March, 1881, and to Charles H. Spang and his partners named in said bill the sum of one thousand and thirty-two dollars, with interest thereon from May 3, 1881; that the complainants are entitled to a decree for the amounts so found due them, respectively, and to a priority of payment; that the sale by the respondent, John Knight, to his co-respondents was fraudulent and void, and that the goods so transferred exceeded in amount the aggregate debts herein found to be due the complainants.

And it is ordered by the court that the remaining matters in issue herein between the intervening petitioners, who have been made parties plaintiff, be referred to the master, who will take testimony and report to the court, with all convenient speed, the amount due each said intervening petitioner—now complainant—and other creditors who may file their claims herein and become parties hereto within thirty days from this date.

117 And it is now agreed between the respondents and all creditors who have been allowed to intervene herein and is so found by the court for the purpose of distribution that the cash value of the goods transferred by John Knight to his co-respondents was the sum of $14,606.40, and that the amount due from said John Knight to Fletcher & Churchman on May 3, 1879, was $10,166.66 and from said John Knight to said Eliza Knight was $10,361.

But the above reference to the master and the proceedings thereunder are not to affect or prejudice the rights of the complainants to the original bill herein, the bill remaining as to them a bill on behalf of themselves only.

And afterwards, to wit, on the 29th day of August, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now John C. Brinkmeyer, by J. M. Winters, his solicitor, and files his intervening petition herein in the words following, to wit:

John C. Brinkmeyer, doing business under the name and style of J. C. Brinkmeyer & Co., in the city of Indianapolis, represents that heretofore, to wit, on or before February 5th, 1879, the defendant, John Knight, purchased of narrator certain goods and merchandise of the value of 26.12, and thereby became indebted to narrator in that sum, for which indebtedness he, the defendant aforesaid, exe-

cuted to the narrator in his said name and style his certain promissory note, whereof the following is a true copy, to wit:

$26.12. INDIANAPOLIS, IND., *July 5th*, 1879.

One year after date I promise to pay to the order of J. C. Brinkmeyer & Co. twenty-six & $\frac{12}{100}$ dollars and ten per cent. attorneys' fees, with interest at 7 per cent. per annum from date until
118 paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

And said narrator says that said note was long since due and remains now due, and, as to the principal and interest thereof, wholly unpaid.

Wherefore narrator prays leave to file this his intervening petition herein, and to share in the trust fund arising in this cause to the creditors of said John Knight, and he prays for all proper relief in the premises.

JOHN C. BRINKMEYER,
By J. M. WINTERS,
His Solicitor.

And afterwards, to wit, on the 31st day of August, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George P. Bissell, trustee, by D. M. Bradbury, his solicitor, and files his intervening petition herein in the words following, to wit:

Your petitioner, George P. Bissell, trustee, would respectfully represent to this honorable court that on and prior to the 3d day of May, 1879, John Knight was indebted to your petitioner in
119 the sum of $28,770.90; that on May 19th, 1879, your petitioner recovered judgment in the superior court of Marion county, Indiana, in the sum above named against said John Knight, on which there is an unpaid balance due your petitioner of five hundred and fifty-nine & $\frac{45}{100}$ ($559.45) dollars.

Your petitioner would respectfully ask an order of this honorable court for a dividend of such sums as may be subject to the order of the court in this behalf.

GEORGE P. BISSELL, *Trustee*,
By D. M. BRADBURY, *Att'y.*

And come also Rumsey & Co., by J. E. Florea, their solicitor, and file their intervening petition herein in the words following, to wit:

Rumsey and Company, a corporation organized and existing in and under and by virtue of the laws of the State of New York, represents to the court and says that said John Knight is indebted to said relator in the sum of seventy-five and $\frac{51}{100}$ dollars, and interest

thereon, for goods, wares, and merchandise sold and delivered by relator to said Knight, a bill of particulars of which is filed herewith and hereof made a part, marked "A," all of which is due and remains wholly unpaid; and said narrator prays the court's permission to file this, said narrator's, intervening petition in this case, and to share in the trust funds held or which may be held by the court—
120 the proceeds of the property of said John Knight, fraudulently transferred over by him to the other defendants in this cause, as stated in the bill of complaint.

RUMSEY AND COMPANY,
By JOSH. E. FLOREA, *Solicitor.*

JOSH. E. FLOREA, *Of Counsel.*

"A."

SENECA FALLS, N. Y., *Aug. 25th*, 1882.

Mr. John Knight, Indianapolis, Ind., bought of Rumsey and Co. (Limited).

1879.				
Feb'y 12.	To 1 stock, No. 4½, gas set		2 25	
	40%		90	
				1 35
March 22.	" 12 sinks, 20 x 30, @ 3.75		45 00	
	" 12 " 16 x 30, " 3.50		42 00	
	" 12 " 14 x 20, " 2.20		26 40	
	" 6 " 16 x 24, " 2.70		16 20	
			129 60	
	75%		97 20	
				32 40
	12 No. 1 P. P. S. P. T. T., 4.25		51 00	
	12 " 2 " " " 4.75		57 00	
			108 00	
	55%		59 40	
				48 60
				82 35
	Less f'g't on bill, M'ch 22d			6 84
				$75 51
	Interest from June 22, '79			14 77
				$90 28

STATE OF NEW YORK, }
County of Seneca, Town of Seneca Falls, } *ss:*

Eugene A. Rumsey, being duly sworn, deposes and says
121 that he is vice-president of Rumsey & Co., Limited, and that the annexed account is just and true; that the services charged therein have actually (and not constructively) been per-

formed and the disbursements made as also therein charged, and that the property sold as therein charged was delivered to the party charged therewith, and that the services charged and disbursements made and property sold as therein enumerated were worth the several amounts charged therefor, and that no part thereof has been paid or satisfied.

EUGENE A. RUMSEY.

Sworn before me this 28th day of August, 1882.
[SEAL.] W. A. S. LATHAM,
Notary Public.

And also come the American Rubber Company, Charles A. Blessing, the Chapman Valve Manufacturing Company, J. L. Mott Iron Works, Watson and McDaniel, and the Reading Iron Works, by W. A. Hughes, their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

And said intervening petition of the American Rubber Company is in the words following, to wit:

The American Rubber Company, a corporation organized under the laws of the State of Massachusetts, respectfully shows that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioner in the sum of thirty-
122 seven dollars and fifty cents for goods, wares, and merchandise sold and delivered by your petitioner to said defendant, a bill of particulars of which is filed herewith, marked Exhibit "A," which said indebtedness is now due and unpaid.

Wherefore your petitioner shows that it is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and it therefore asks that its said claim be allowed and paid out of said fund rateably, and it asks all other proper relief.

AMERICAN RUBBER CO.,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

"EXHIBIT A."

BOSTON, *April 8th*, 1879.

John Knight bought of American Rubber Co., 59 and 61 Franklin St.

Terms: 4 mo's.

500 ft. ¾ 3 hose, .30	150	00
75 %	112	50
	37	50

Interest to time of settlement.

COMMONWEALTH OF MASSACHUSETTS:

Court of Insolvency.

In the case of John Knight, of Indianapolis, Indiana, insolvent debtor, I, O. W. Paine, treasurer of the American Rubber Company, a corporation duly established by law and having its
123 usual place of business at Boston, do swear that said John Knight, by whom proceedings in insolvency have been instituted at and before the date of such proceedings, was and still is justly and truly indebted to said corporation in the sum of thirty-seven & $\frac{50}{100}$ dollars, with interest, for which sum or any part thereof I have not nor has any other person to the use of said corporation, to my knowledge or belief, received any security or satisfaction whatever beyond what has been disposed of agreeably to law.

And I do further swear that, to the best of my knowledge and belief, the said claim was not procured by said corporation for the purpose of influencing the proceedings in this case.

And I do further swear that I have not and, to the best of my knowledge and belief, said corporation has not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of said corporation's claim or any part of its claim against said debtor, nor have I nor has said corporation, to the best of my knowledge and belief, directly or indirectly, received or taken or made or entered into any bargain, arrangement, or agreement, expressed or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever to myself or to any person or persons to said corporation's use or benefit, under or with any understanding or
124 agreement, expressed or implied, whereby said corporation's vote for assignees or its assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

O. W. PAINE.

SUFFOLK, *ss:*

BOSTON, *Aug. 24th*, 1882.

Then personally appeared the above-named O. W. Paine and made solemn oath that the foregoing declaration by him subscribed is true.

Before me— J. J. HALEY,
Justice of the Peace.

And said intervening petition of Charles A. Blessing is in the words following, to wit:

Charles A. Blessing respectfully shows that the defendant herein, John Knight, was indebted to your petitioner on and before the 3d day of May, 1879, in the sum of eleven dollars for goods, wares, and merchandise bought of your petitioner by said defendant, and de-

livered to him as per bill of particulars filed herewith, marked Exhibit "A," in which sum he is still indebted and which is now due.

Wherefore your petitioner says he is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and he therefore asks that his said claim be allowed and paid rateably out of said funds, and he asks all other proper relief.

CHARLES A. BLESSING,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

125 PHILADELPHIA, *Apr. 30th*, 1879.

Mr. Jno. Knight bought of C. A. Blessing.

2 doz. light cop. pans, 4.50	9 00	
Boxing	25	
		9 25
Interest from May 30th, '79, to Aug. 1st, '82, @ 6%		1 75
		$11 00

And said intervening petition of Chapman Valve M'f'g Co. is in the words following, to wit:

The Chapman Valve Manufacturing Company, a corporation organized under the laws of the State of Massachusetts, respectfully shows that the defendant herein, John Knight, was indebted to your petitioner on the 3d day of May, 1879, and prior thereto, in the sum of one hundred and sixty-nine dollars and twenty-five cents for goods, wares, and merchandise sold and delivered by petitioner to said defendant, a bill of particulars of which is filed herewith, marked Exhibit "A," which said indebtedness is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and it therefore asks that its said claim be allowed and paid out of said fund rateably, and it asks all other proper relief.

CHAPMAN VALVE COMPANY,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

126 "EXHIBIT A."

BOSTON, *May 1st*, 1879.

Mr. John Knight bought of Chapman Valve Man'f'g Co.

1879.

Sales from Dec. 31, '78, to May 1st, 1879:

4	¾	comp. valves,	1.75	7 00	
14	1	" "	2.25	31 50	
7	1¼	" "	3.25	22 75	
9	1½	" "	4.25	38 25	
8	2	" "	6.25	50 00	
4	2½	J. B. S. E. steam valves,	10.00	40 00	
1	3	" " " "		12 00	
				201 50	
		30%		60 45	
					141 05
Interest at 6% from May 1st, 1879, to Sept. 1st, 1882					28 20
					$169 25

And said intervening petition of the J. L. Mott Iron Works is in the words following, to wit:

The J. L. Mott Iron Works, a corporation organized under the laws of the State of New York, respectfully shows that the defendant herein, John Knight, was indebted to your petitioner for goods, wares, and merchandise sold and delivered to him on and before the 3d day of May, 1879, in the sum of one hundred and twenty dollars ($120), for which indebtedness said Knight thereafter, on the 16th day of May, 1879, executed his promissory note, of which the following is a true copy, to wit:

$120.00. INDIANAPOLIS, IND., *May 16th*, 1879.

127 One year after date I promise to pay to the order of the J. L. Mott Iron Works one hundred and twenty dollars and ten per cent. attorneys' fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

JOHN KNIGHT.

Which said note is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into court by the de-

cree in this cause, and *he* therefore asks that said claim be allowed and paid rateably from said fund.

THE J. L. MOTT IRON WORKS,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

And said intervening petition of Watson and McDaniel is in the words following, to wit:

James Watson and John S. McDaniel, partners doing business under the firm name and style of Watson and McDaniel, respectfully show that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioners
128 in the sum of fifty-one ($51.00) dollars for goods, wares, and merchandise sold and delivered by your petitioners to said defendant, a bill of particulars of which is filed herewith, marked "Exhibit A," which said indebtedness is now due and unpaid.

Wherefore your petitioners show that they are entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and they therefere ask that their said claim be allowed and paid out of said fund rateably, and they ask all other proper relief.

WATSON AND McDANIEL,
By W. A. HUGHES,
Solicitor for Petitioners.

W. A. HUGHES, *Of Counsel.*

PHILADELPHIA, *Aug. 28th*, 1882.

Mr. John Knight to Watson and McDaniel, Dr., 248 North Eighth St.

1878.			
June 15.	To 2 #1 steam traps		30 00
"	1 #2 "		21 00
			$51 00

And said intervening petition of the Reading Iron Works is in the words following, to wit:

The Reading Iron Works, a corporation organized under the laws of the State of Pennsylvania, respectfully shows that the defendant herein, John Knight, was indebted to your petitioner for goods, wares, and merchandise sold and delivered to him on and
129 before the 3d day of May, 1879, in the sum of four hundred and ninety-five dollars and eighty cents, for which indebtedness said Knight thereafter, on the 17th day of November, 1879, executed his promissory note, of which the following is a copy, to wit:

$495.80. INDIANAPOLIS, IND., *Nov. 17th*, 1879.

Six months after date I promise to pay to the order of Reading Iron Works four hundred and ninety-five $\frac{80}{100}$ dollars at Fletcher's Bank, Indianapolis, Ind., without defalcation, value received.

JOHN KNIGHT.

Which said note is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into court by the decree in this cause, and *he* therefore asks that said claim be allowed and paid rateably from said fund.

THE READING IRON WORKS,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

UNITED STATES OF AMERICA, }
State of Indiana, } *To wit:*

Be it known that on Thursday, the 20th day of May, A. D. 1880, I, Jonathan Elliott, notary public, by lawful authority duly commissioned and sworn, living in Indianapolis, in the county of Marion and State aforesaid, at the request of J. C. McCutcheon, cash'r
130 First National Bank of Indianapolis, Indiana, holders of the original promissory note hereto attached, after the close of bank hours presented the same at Fletcher's Bank, Indianapolis, Indiana, and demanded payment thereof, the time limited for payment having expired, whereto I was answered: "No funds."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer and endorsers of said note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered or to be suffered for the want of payment of said note, and addressed written notices thereof to the endorsers of the same, and informing them that they are held liable for the payment of said note, and on the same day, in the evening, I deposited such notices, post-paid, in the post office, at the city of Indianapolis, inclosed and addressed "J. Mason, cash'r Farmers' and Mechanics' Nat'l Bank, Philadelphia, Pa."

This done and protested at Indianapolis the day and year above written.

In witness whereof I grant these presents under my signature and impress of my notarial seal.

[SEAL.] JONATHAN ELLIOTT,
Notary Public.

Fees:

Protest	50
Record	50
4 notices	1 50
Postage	03
Total	$2 03

131 And afterwards, to wit, on the 1st day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now Mooney, Taylor and Smith, by Horace Speed, Esq.,

their solicitor, and file their intervening petition herein in the words following, to wit:

James E. Mooney, William A. Taylor, and William H. Smith, partners under the firm name of Mooney, Taylor and Smith, show to the court that the defendant, John Knight, bought of them on credit goods and merchandise between March 7th and April 26th, 1879, both inclusive, to the value of $53.72, a bill of particulars of which is filed herewith as part hereof and marked "Exhibit A;" that said sum is due, with interest thereon from May 1st, 1879, and wholly unpaid.

And the narrators pray that they may be permitted to join in the above-entitled cause and share in the fund arising herein, and for all further proper relief.

JAMES E. MOONEY,
WILLIAM A. TAYLOR,
WILLIAM H. SMITH,
By HORACE SPEED,
Their Attorney.

HORACE SPEED, *Of Counsel.*

132 INDIANAPOLIS, IND., *Aug. 29th*, 1882.

Mr. John Knight, Indianapolis, bought of Mooney, Taylor and Smith, 137 and 139 S. Meridian St.

1879.			
M'ch 7.	2 doz. 1¼-in. ball valves, 1.75	3 50	
	35 %	1 22	
			2 28
29.	20 ft. 1-in. 3-ply hose, .40	8 00	
	65 %	5 20	
			2 80
31.	60 ft. 1-in. 4-ply hose, .50	30 00	
	70 %	21 00	
			9 00
Apr. 1.	15½ lbs. sq. p'k'g, .80	12 40	
	40 %	4 96	
		7 44	
	3 lbs. #7 rivets @ .49	1 47	
	40 %	58	
		89	
			8 33
2.	4¾ lbs. ⅜ sq. packing, .80	3 80	
	40 %	1 52	
			2 28
8.	75 ft. 1-in. 3-ply hose, .40	30 00	
	70 %	21 00	
			9 00
14.	50 ft. 1-in. 2-ply hose, .33	16 50	
	70 %	11 55	
			4 95

15. 25 ft. 1-in. 3-ply hose, .40	10 00	
70 %	7 00	
		3 00
21. 14½ lb-. ½ packing, .65	9 43	
70 %	6 60	
		2 83
23. 6½ lb-. sq. packing, .80	5 00	
35 %	1 75	
		3 25
26. 50 ft. 1-in. 3-ply hose, .40	20 00	
70 %	14 00	
		6 00
		$53 72

133 STATE OF INDIANA, } ss:
Marion County, }

William H. Smith, being duly sworn, says that he is a partner in the above-entitled firm, which is composed of himself, James E. Mooney, and William A. Taylor: that the above account is correct and just and unpaid, and that interest at 6% from May 1st, 1879, is due thereon; that there is no just set-off, counter-claim, or deduction to be made therefrom.

WM. H. SMITH.

Subscribed and sworn to before me this 29th day of August, 1882.
[SEAL.] HOWARD CALE,
Notary Public.

And afterwards, to wit, on the 2d day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now Hayden and Co., by Horace Speed, Esq., their solicitor, and file their intervening petition herein in the words following, to wit:

The Hayden Company, a corporation organized and existing under the laws of the State of Massachusetts and a citizen of that State, shows to the court that on the 12th day of May, 1879, in consideration for certain goods bought by said John Knight of it, he executed his promissory note to said company for $152.63 at 1 year,
134 with 7% interest (and 10% attorneys' fees) from maturity until paid. A copy of said note is endorsed hereon as part hereof, marked Exhibit A; that said note is due and wholly unpaid.

And the narrator prays permission to file this claim and become a party plaintiff in the above-entitled cause and share in the fund arising thereon, and for all other proper relief.

THE HAYDEN COMPANY,
By HORACE SPEED, *Their Solicitor.*

HORACE SPEED, *Of Counsel.*

$152.63. INDIANAPOLIS, IND., *May 12th*, 1879.

One year after date I promise to pay to the order of the Hayden Co. one hundred and fifty-two & $\frac{63}{100}$ dollars and ten per cent. attorneys' fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity.

The drawers and endorsers severally waive presentment for payment protest, and notice of protest and non-payment of this note.

JOHN KNIGHT.

In the Matter of the Claim of THE HAYDEN COMPANY

against

JOHN KNIGHT.

COUNTY AND STATE OF NEW YORK, *ss:*

135 George L. Strong, being duly sworn, says I am treasurer of the Hayden Company, a corporation created by and existing under the laws of the State of Massachusetts. On the 12th day of May, 1879, said corporation received from John Knight, Esq., his certain promissory note, annexed hereto and made a part of this affidavit, in consideration for certain goods bought by said Knight of said company before May 3, 1879, by which said John Knight promised, for value received, to pay to the order of the said The Hayden Company, one year from said 12th day of May, 1879, at Fletcher's Bank, Indianapolis, Ind., the sum of one hundred and fifty-two & $\frac{63}{100}$ dollars ($152.63), with interest thereon from date, May 12th, 1879, at seven per cent. (7%) per annum, the interest up to maturity having, by the terms of said note, been already paid. No part of said principal sum of one hundred and fifty-two and $\frac{63}{100}$ dollars ($152.63) or of the interest due according to the terms of said note has been paid, but said note is wholly unpaid, and said principal sum and interest are now justly due and owing the said The Hayden Company.

THE HAYDEN COMPANY.
GEORGE L. STRONG.

Sworn to before me this 4th day of September, 1882.

[SEAL.] WILLIAM A. HARDING,
Notary Public, Kings and New York Counties, N. Y.

136 And afterwards, to wit, on the — day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Blake Steam Gauge Co., by W. A. Hughes, Esq., its solicitor, and files its intervening petition herein in the words following, to wit:

The Blake Steam Gauge Company, a corporation organized under the laws of the State of Ohio, respectfully shows that the defendant

herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioner in the sum of sixteen dollars and five cents ($16.05) for goods, wares, and merchandise sold and delivered by your petitioner to said defendant, a bill of particulars of which is filed herewith, marked Exhibit "A," and which said indebtedness is now due and unpaid.

Wherefore your petitioner shows that it is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and it therefore asks that its said claim be allowed and paid out of said fund rateably, and your petitioner asks all other proper relief.

BLAKE STEAM GAUGE COMPANY,
By W. A. HUGHES,
Solicitor for Petitioner.

W. A. HUGHES, *Of Counsel.*

137 "EXHIBIT A."

Monthly Statement.

Mr. John Knight, Indianapolis, Ind., in acc't with Blake Steam Gauge Co., corner Fourth and Vine streets.

HAMILTON, O., *Aug.* 31*st*, 1882.

1878.					
Feb'y	26.	To mdse.		18 00	
Mar.	13.	" "		60 00	
July	3.	" "		19 00	
Sept.	16.	" "		42 50	
					139 50

CR.

1878.					
July	8.	By mdse.		1 50	
"	17.	" cash		16 50	
Aug.	6.	" mdse.		1 50	
Nov.	1.	" bills rec.		60 00	
1879.					
May	8.	" mdse.		43 95	
					123 45
					$16 05

THE STATE OF OHIO, } ss:
Butler County, }

Christian Benninghofen, being duly sworn, says he is the treasurer of Blake Steam Guage Co., a company duly incorporated under the laws of Ohio, owners of the annexed claim; that said claim is correct, just, and lawful; that no payment has been made thereon (except what is credited); that no offset or counter-claim exists against the same; that no personal or collateral security is held for the pay-

ment thereof, and that the estate of John Knight is now justly indebted to them on said claim as follows, to wit:

138 On principal of said claim $16 05
On interest at 6 per cent. per annum thereon from the 8th of May, 1879 .....
Probate 25

C. BENNINGHOFEN.

Subscribed in my presence and sworn to before me this 31st day of August, 1882.

[SEAL.] WM. B. G. MENKIN,
Notary Public, Butler County, Ohio.

And afterwards, to wit, on the 4th day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now Abendroth Bros., by Horace Speed, Esq., their solicitor, and file their intervening petition herein in the words following, to wit:

The "Abendroth Bros.," a corporation organized and existing under the laws of the State of New York, show to the court that said John Knight is indebted to it for goods bought March 31st, 1879, on 60 days' credit, a bill of particulars of which is filed herewith as part hereof, marked "Exhibit A;" that said debt is due and unpaid, with interest from maturity, and the narrator prays permission to file its claim and become a party plaintiff in the above-entitled cause and share in the fund arising therein, and for all proper relief.

ABENDROTH BROTHERS,
By HORACE SPEED,
Its Solicitor.

HORACE SPEED, *Of Counsel.*

139 EXHIBIT "A."

109 & 111 BEEKMAN ST., NEW YORK, *March 31st*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of Abendroth Brothers.

Terms: Net 60 days.
Via S. U. line.

100 ft. each 3^{20}, 5^{32}, & 6^{40} in. pipe, .92		92 00
200 " 4 pipe, .22		44 00
24 each 3^{45} & 4^{50} in. $\frac{1}{4}$ bends, .95		22 80
6 " 5^{75} & 6^{90} in. " 1.65		9 90
12 3 in. $\frac{1}{8}$ bends, .35		4 20
24 4 " $\frac{1}{8}$ " .45		10 80
6 each 5^{65} & 6^{75} $\frac{1}{8}$ bends, 1.40		8 40
50 80		
6 " 4 x 4 T & 4 x 4 Y, 1.30		7 80
3 6 x 6 Y, 1.30		3 90

12 2-in. d'ble hubs, .25	3 00
6 3 " " .35	2 10
24 4 " " .40	9 60
65 75 85 95	
3 each 3 x 4, 3 x 8, 4 x 6, 4 x 8 offsetts, 3.20	9 60
6 4 x 4 offsetts, .70	4 20
100 125	
3 each 3-in. & 4-in. ½ S traps, 2.25	6 75
	239 05
40%	95 62
	143 43
10%	14 34
	129 09
1 bbl.	30
Cartage	3 00
	132 39

Interest from June 1st, 1879.

140 STATE OF NEW YORK, } ss:
City and County of New York, }

I hereby certify that on this second day of September, 1882, before me, Isaac S. Smith, notary public for New York State and commissioner for the State of Indiana in the county and State of New York, personally appeared William A. Abendroth, who, being by me duly sworn, doth depose and say he is secretary of Abendroth Brothers, a corporation organized under the laws of New York and doing business in the city of New York; that John Knight, of Indianapolis, State of Indiana, is indebted to said company in the sum of one hundred and thirty-two dollars and thirty-nine cents, with interest thereon from June 1st, 1879, on an account of which the annexed is a just, true, and correct copy and statement from the books of said company, which account became due and payable June 1st, 1879; that there are no offsets against the same, and that no note, judgment, mortgage, or collateral or other security has been given to or obtained by said company therefore, and that the said sum, with interest as aforesaid, is justly due and wholly unpaid.

And further deponent saith not.

W. A. ABENDROTH, *Secretary.*

Subscribed and sworn to before me September 2d, 1882. In witness whereof I have hereunto set my hand and affixed my
141 official seal at the city and county and State of New York aforesaid.

[SEAL.] ISAAC S. SMITH,
Commissioner for Indiana and all Other States and Territories in and for County and State of New York.

Office, 128 Broadway, N. Y.

And afterwards, to wit, on the 5th day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Castle and Hitchcock and Fieldhouse, Dutcher and Belden, by W. A. Hughes, their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

And said intervening petition of Castle and Hitchcock is in the words following, to wit:

Oliver H. Castle and Charles E. Hitchcock, partners doing business under the firm name and style of Castle and Hitchcock, respectfully show that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioners in the sum of eighty-eight dollars and thirty-four cents ($88.34) for goods, wares, and merchandise sold and delivered by your petitioners to said defendant. Said indebtedness is evidenced by a promissory note in the words and figures following, to wit:

"$88.34. INDIANAPOLIS, IND., *April 19th*, 1879.

Sixty days after date I promise to pay to the order of Castle
142 & Hitchcock eighty-eight & $\frac{34}{100}$ dollars and ten per cent. attorneys' fees, with interest, at ten per cent. per annum, from date until paid, negotiable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and non-payment of this note.

JOHN KNIGHT."

Which said indebtedness is now due and unpaid.

Wherefore your petitioners show that they are entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and they therefore ask that their said claim be allowed and paid out of said fund rateably, and they ask all other proper relief.

CASTLE AND HITCHCOCK,
By W. A. HUGHES,
Their Solicitor.

W. A. HUGHES, *Of Counsel.*

And said intervening petition of Fieldhouse, Dutcher and Belden is in the words following, to wit:

John Fieldhouse, George N. Dutcher, and Charles W. Belden, partners doing business under the firm name and style of Fieldhouse, Dutcher and Belden, respectfully show that the defendant herein, John Knight, was, on or before the 3d day of May, 1879, indebted to your petitioner in the sum of fifty-one dollars and thirty cents
143 ($51.30) for goods, wares, and merchandise sold and delivered by your petitioners to said defendant, a bill of particulars of which is filed herewith, marked "Exhibit A," which said indebtedness is now due and unpaid.

Wherefore your petitioners show that they are entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and they therefore ask that their said claim be allowed and paid out of said fund rateably, and they ask all other proper relief.

FIELDHOUSE, DUTCHER & BELDEN,
By W. A. HUGHES, *Their Solicitor.*

W. A. HUGHES, *Of Counsel.*

EXHIBIT A.

CHICAGO, *July 26th*, 1882.

Jno. Knight, Indianapolis, Ind., to Fieldhouse, Dutcher and Belden, Dr.

1879.			
M'ch 14.	1,006.8 ft. 1¼ pipe, .10	100 67	
	45%		55 37
	F'g't		4 07
			$51 30

We agree to pay 30 cents on the dollar.

HEROD AND WINTER.

For value received we hereby sell, assign, and transfer all our right, title, and interest in and to the within account to Eliza D. Knight without recourse on us.

Indianapolis, July 27th, 1882.

FIELDHOUSE, DUTCHFR & BELDEN,
Per CHAS. R. HASELEY, *Att'y.*

144 And comes now also F. Lukenheimer, by J. M. Judah, Esq., his solicitor, and files his intervening petition herein in the words following, to wit:

Your petitioner, F. Lunkenheimer, respectfully represents and shows to the court that heretofore, on the 14th day of May, 1879, said defendant, John Knight, made, executed, and delivered unto your petitioner his certain promissory note, bearing date the said 14th day of May, 1879, whereby he promised to pay unto the order of your petitioner one year after said date the sum of eight-four & $\frac{36}{100}$ ($84.36) dollars, with ten per cent. attorneys' fees and with interest at the rate of seven per cent. per annum from said date until paid, which was paid to maturity, without any relief whatever from valuation or appraisement laws; that thereafter, on the 21st day of May, 1880, the interest on said note to the 14th day of May, 1881, was paid, which payment was endorsed upon the back of said note, and your petitioner says and shows that the following is a copy of said note, to wit:

$84.36. INDIANAPOLIS, IND., *May 14th*, 1879.

One year after date I promise to pay to the order of F. Lunkenheimer eighty-four and $\frac{36}{100}$ dollars and ten per cent. attorneys' fees,

with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws.

145 The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

And that the following is a copy of such indorsement on said note, to wit:

"May 21st, 1880.—Interest paid on this note up to May 14th, 1881, $5.51."

And your petitioner says and shows that excepting such payment of such interest up to May 14th, 1881, said note and interest thereon to this date and attorneys' fees, as provided in said note, are each and all wholly due and unpaid, and that there is now due and owing on said note to your petitioner the sum of eighty-six & $\frac{36}{100}$ dollars, with ten per cent. attorneys' fees and with interest at seven per cent. per annum from May 14th, 1881, and that there exists no offset or counter-claim against the same, and that your petitioner is the owner and holder of said note.

And your petitioner prays the permission of this court to file this his intervening petition in this cause and to share in the trust funds held or to be held by this court, proceeds of the property of said defendant, John Knight, turned over by him to the other defendants in this cause, as set out in the bill of complaint herein; and your petitioner further prays that said defendants be required to

146 bring into court the value of the property so turned over, to be applied to the payment of your petitioner's said note and claim, and he prays for all other further and proper relief.

Dated September 4th, 1882.

F. LUNKENHEIMER,
By JOHN M. JUDAH, *His Att'y.*

And afterwards, to wit, on the 7th day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Richmond Stove Company, the Stacey Manufacturing Company, Crane Brothers Manufacturing Company, and Thomas Maddock, by Ayres and Brown, their solicitors, and file their separate intervening petitions herein, respectively, in the words following, to wit:

And said intervening petition of the Richmond Stove Company is in the words following, to wit:

The Richmond Stove Company, a corporation organized and doing business under and by virtue of the laws of Connecticut, respectfully shows that defendant herein, John Knight, was indebted to your petitioner for goods, wares, and merchandise sold and delivered to him on or before the 3d day of March, 1879, in the sum of seventy-

two & $\frac{62}{100}$ dollars, as will appear from a bill of particulars filed herewith and made a part hereof, marked "Exhibit A," which
147 sum therein stated is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into court by the decree in this cause, and *he* therefore asks that said claim be allowed and paid rateably from said fund.

AYRES AND BROWN,
Solicitors for Petitioner.

"EXHIBIT A."

NORWICH, CONN., *Sept. 4th*, 1882.

Mr. John Knight bought of the Richmond Stove Company.

1878.					
Spet. 2.	2 2 – ft. sinks @ 1.25	2 50			
	2 2½ " " " 1.50	3 00			
	2 3 " " " 2.00	4 00			
			9 50		
	Less 20%		1 90		
				7	60
1879.					
Feb'y 19.	6 2 pat. sinks @ 2.00	12 00			
	6 2½ " " 2.50	15 00			
	6 3 " " 3.00	18 00			
	6 3½ " " 3.75	22 50			
	6 4 " " 5.00	30 00			
	1 3 pat. dish rack, no ch'g.	00			
			97 50		
	Less 40, 10%		44 85		
				52	65
M'ch 17.	6 2 dish racks @ .50	3 00			
	6 2½ " " .65	3 90			
	5 3 " " .80	4 00			
	6 3½ " " 1.00	6 00			
	6 4 " " 1.00	6 00			
	1 soap dish, no ch'g.	00			
			22 90		
	Less 40, 10%		10 53		
				12	37
				$72	62

148 And said intervening petition of the Crane Bros. Manufacturing Company is in the words following, to wit:

The Crane Bros. Manufacturing Co., a corporation organized and existing under and by virtue of the laws of the State of Illinois, respectfully shows to the court that the defendant herein, John Knight, was indebted to your petitioner for goods, wares, and merchandise sold and delivered to *it* on or before the 3d day of May,

1879, in the sum of fifty-five & $\frac{40}{100}$ dollars, for which indebtedness said Knight thereafter, on the 12th day of May, 1879, executed his promissory note, of which following is a copy, to wit:

INDIANAPOLIS, IND., *May 12th*, 1879.

One year after date I promise to pay to the order of the Crane Bros. M'f'g Co. fifty-five & $\frac{40}{100}$ dollars and ten per cent. attorneys' fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

Which note is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into this court,
149 and *he* therefore asks that said claim be allowed and paid rateably from said fund.

AYRES AND BROWN,
Solicitors for Petitioner.

And said intervening petition of Thomas Maddock is in the words following, to wit:

Thomas Maddock, sole surviving member of the late firm of Astbury & Maddock, of Trenton, in the State of New Jersey, respectfully shows that defendant herein, John Knight, was indebted to your petitioner for goods, wares, & merchandise sold and delivered to him on or before the 3d day of May, 1879, in the sum of ninety-three & $\frac{60}{100}$ dollars, as will appear from a bill of particulars filed herewith and made a part hereof, marked Exhibit "A" which account is now due and wholly unpaid.

Wherefore your petitioner says he is entitled to share in the distribution of the fund which has been brought into this court by the decree in this cause, and he therefore asks that said claim be allowed and paid rateably from said fund.

AYRES AND BROWN,
Sol's for Petitioner.

TRENTON, N. J., *Aug. 28th*, 1882.

Mr. John Knight, Indianapolis, Ind., to Astbury and Maddock, Dr.

1879.					
		To balance per statement rendered:			
Feb.	—.	" mdse. per bill rendered—			
"	22.	" 36 P. O. baisins 14", .95	34 20		
		" 12 " " 12", .75	9 00		
				43	20
"	21.	" 36 R. P. " 14", 1.10	39 60		
		" 12 " " 12", .90	10 80		
				50	40

150 And said intervening petition of the Stacey Manufacturing Company is in the words following, to wit:

The Stacey Manufacturing Company, a corporation organized and doing business under and by virtue of the laws of the State of Ohio, respectfully shows that the defendant herein, John Knight, was indebted to your petitioner for goods, wares, and merchandise sold and delivered to him on or before the 3d day of May, 1879, as shown by a bill of particulars filed herewith and made a part hereof, marked Exhibit "A," in the sum of 8.25, which is now due and wholly unpaid.

Wherefore your petitioner says it is entitled to share in the distribution of the fund which has been brought into court by the decree of this court, and it therefore asks the said claim be allowed and paid rateably from said fund.

AYRES AND BROWN,
Solicitors for Petitioner.

CINCINNATI, *Aug. 24th*, 1882.

John Knight in ac. with the Stacey M'f'g Co., successors to George Stacey and Co.

1879.		
Jan'y 16.	To 1 250-lb. lamp-post, complete	7 75
	drayage	50
		$8 25

And afterwards, to wit, on the 8th day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

151 Come now Traber and Aubery, by L. B. Swift, their solicitor, and file their intervening petition herein in the words following, to wit:

Jacob T. Traber and William Aubery represent to the court that heretofore, to wit, March 9th, 1874, the Greenleaf Manufacturing Company executed and delivered their promissory note to John Knight, defendant herein, a copy of which said note, with the endorsements thereon, is filed with this petition and made a part hereof, marked "Exhibit A."

That thereafter and before the maturity of said note said John Knight, for a valuable consideration, endorsed and delivered the same to Means, Russell & Means; that thereafter and before the maturity of said note said Means, Russell and Means, for a valuable consideration, endorsed and delivered the same to the petitioners herein, doing business under the firm name and style of Traber and Aubery, who are now the lawful owners and holders thereof; that before the maturity of said note and before suit could be brought upon the same the said Greenleaf Manufacturing Company made assignment in bankruptcy; that said note was filed with the assignee of said company, and August 26th, 1879, these petitioners received from said bankrupt estate the sum of $22.59, the same being all the dividends on said claim made and to be made

out of said bankrupt estate; that, except said dividend so received, said note is wholly unpaid and the same is long past due.

152 Wherefore these petitioners say that they are entitled to share in the distribution of the trust fund which has been brought into court or may be brought into court by decree in this case, and they therefore pray that they may file their intervening petition herein, and that the said claim of $392.50, with interest thereon at 10 % from July 9th, 1874, be allowed, excepting the dividend above set forth, and paid, rateably, out of said fund—the proceeds of the property of said Knight turned over by him and the other defendants in this cause, as stated in the bill of complaint.

TRABER & AUBERY,
By LUCIUS B. SWIFT,
Their Attorney.

"EXHIBIT A."

$392.50. INDIANAPOLIS, IND., *M'ch 9th*, 1874.

Four months after date we promise to pay to the order of John Knight, Esq., three hundred and ninety-two $\frac{50}{100}$ dollars, with five per cent. attorneys' fees if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note, with ten per cent. interest after maturity until paid, negotiable and payable at ——.

GREENLEAF M'F'G CO.,
Per JNO. W. RAY, *Treasurer.*

Protested July 9th, '74.

W. F. H., *N. P.*

And afterwards, to wit, on the 9th day of September, 1882,

153 at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now the Eaton, Cole and Burnham Company, Ramie and Torrey, and Dean Brothers, and Horace Parrott, by W. A. Hughes, their solicitor, and file their separate intervening petitions herein, respectively, in the words following, to wit:

The Eaton, Cole and Burnham Company, a corporation duly organized under the laws of the State of New York, respectfully shows that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioner in the sum of sixty-three dollars and twenty-one cents ($63.21) for goods, wares, and merchandise sold and delivered by your petitioner to said defendant, as evidenced by his certain promissory note, of which the following is a true copy, to wit:

$63.21. INDIANAPOLIS, IND., *May 16th*, 1879.

One year after date I prom-e to pay to the order of the Eaton, Cole and Burnham Company sixty-three & $\frac{21}{100}$ dollars and ten per cent. attorneys' fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, In-

dianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally
154 waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

Which said indebtedness, with interest, is now due and unpaid.

Wherefore your petitioner shows that it is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and it therefore asks that its said claim be allowed and paid out of said fund, rateably, and it asks for all proper relief.

THE EATON COLE AND BURNHAM CO.,
By W. A. HUGHES, *Their Solicitor.*

W. A. HUGHES, *Of Counsel.*

UNITED STATES OF AMERICA, } *To wit:*
State of Indiana, }

Be it known that on Wednesday, the 19th day of May, A. D. 1880, I, Jonathan Elliott, notary public, by lawful authority duly commissioned and sworn, living in Indianapolis, in the county of Marion and State aforesaid, at the request of D. M. Taylor, cashier Indiana National Bank, Indianapolis, Indiana, holders of the original promissory note hereto attached, after the close of bank hours presented the same at Fletcher's Bank, Indianapolis, Indiana, and demanded payment thereof, the time limited for payment having expired, whereto I was answered: "No instructions." Wherefore I, the said notary, at the request aforesaid, have protested, and
155 by these presents do solemnly protest, as well against the drawer and endorsers of said note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered or to be suffered for the want of payment of said note, and addressed written notices thereof to the endorsers of the same *and* informing them that they are held liable for the payment of said note; and on the same day, in the evening, I deposited such notices, post-paid, in the post office at the city of Indianapolis, enclosed and addressed "George W. Harris, cashier National Bank of Commerce, Boston, Mass."

This done and protested at Indianapolis the day and year above written.

In testimony whereof I grant these presents under my signature and impress my notarial seal.

[SEAL.] JONATHAN ELLIOTT,
Notary Public.

Fees:	
Protest	50
Record	50
3 notices	75
Postage	03
Total	1 75

STATE OF NEW YORK, }
City & County of New York, } ss:

James C. Bloom, being duly sworn, says that he is the book-keeper of the Eaton, Cole and Burnham Company, the payee named in the note hereto attached; that no part of said note has been paid,
156 and there is now due justly and owing thereon to said Eaton, Cole and Burnham Company the sum of sixty nine & $\frac{44}{100}$ dollars, including interest to May 19th, 1880, and the costs of protest thereof, and that there are no offsets against the same, and that the said Eaton, Cole and Burnham Company hold no security therefor.

JAMES C. BLOOM.

Sworn to before me this 6th day of September, 1882.

[SEAL.] AMASA B. ANGELL,
Notary Public, N. Y. Co.

And said intervening petition of Ramei & Torrey is in the words following, to wit:

—— Ramei and E. S. Torrey, partners doing business under the firm name and style of Ramei and Torrey, respectfully show to the court that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioner in the sum of fifty-four dollars and fifty cents ($54.50); said indebtedness was contracted on the 14th day of March, 1879, by the purchase of your petitioners by the defendant, John Knight, of a quantity of plumbers' lead traps; said indebtedness is now due and unpaid.

Wherefore your petitioners show that they are entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and they ask that their said claim be allowed and paid out of said fund, rateably, and they ask all other proper relief.

RAMEI AND TORREY,
By W. A. HUGHES,
Their Solicitor.

W. A. HUGHES, *Of Counsel,*

157 And said intervening petition of Dean Bros. is in the words following, to wit:

Edward H. Dean, Wilford R. Dean, and John C. Dean, partners doing business under the firm name and style of Dean Brothers, respectfully show that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioners in the sum of twenty dollars and twenty-six cents ($20.26) for goods, wares, and merchandise sold and delivered by your petitioners to said defendant, a bill of particulars of which is filed herewith, marked "Exhibit A," which said indebtedness is now due and unpaid.

Wherefore your petitioners show that they are entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and they therefore ask that their said

claim be allowed and paid out of said fund rateably, and they ask all other proper relief.

DEAN BROTHERS,
By W. A. HUGHES,
Their Solicitor.

W. A. HUGHES, *Of Counsel.*

EXHIBIT A.

INDIANAPOLIS, IND., *March 1st*, 1879.

John Knight bought of Dean Brothers.

To balance due on account ---------- $20 26

158 And said intervening petition of Horace Parrott is in the words following, to wit:

Horace Parrott respectfully shows that the defendant in the above-entitled cause, John Knight, was indebted to him on the 3d day of May, 1879, in the sum of three thousand dollars, with interest at the rate of ten per cent. per annum until paid, from the 28th day of April, 1876, for money borrowed from your petitioner by said John Knight at said last-mentioned date; that said Knight at the time executed to your petitioner his promissory note, of which the following is a copy, to wit:

"$3,000. INDIANAPOLIS, IND., *April 28th*, 1876.

One year after date I promise to pay to the order of Horace Parrott three thousand dollars in the gold coin of the United States, with interest at ten per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. If this note is paid at maturity or before suit is brought thereon, then it shall be payable in any lawful money of the United States. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT."

The payment of said note was secured by mortgage upon certain real estate, the property of said Knight.

159 Thereafter, to wit, on the 4th day of March, 1880, in an action commenced by your petitioner against said John Knight in the Marion superior court, your petitioner recovered judgment on said note against said Knight for the sum of $3,385.17 and a decree for the foreclosure of said mortgage and sale of the mortgaged property; and afterwards, by sale of said mortgaged property, which was the only security your petitioner had, there was realized the sum of $—, which was applied to said indebtedness, leaving unpaid thereof the sum of $575, which is still unpaid and now due, and for which your petitioner has no security.

Your petitioner therefore says that he is entitled to share in the distribution of the fund which has been brought into court under the decree in this cause, and he asks that his said claim be allowed

as against said fund and paid therefrom, rateably, with the other indebtedness of said John Knight, and he asks all other proper relief.

HORACE PARROTT,
By W. A. HUGHES,
His Solicitor.

W. A. HUGHES, *Of Counsel.*

And comes also John H. McGowan, by W. D. Bynum, his solicitor, and files his intervening petition herein in the words following, to wit:

The undersigned petitioner, John H. McGowan, would respectfully petition said court and say that he is the firm of John H. McGowan Co., and that he is a resident of the city of Cincinnati, Ohio; that said John Knight is owing and indebted to him in the sum of thirty-four dollars and ninety-seven cents ($34.97) for
160 work and labor done and performed, and for goods, wares, and merchandise sold and delivered as per bill of items filed herewith and made a part hereof and evidenced by promissory note filed herewith and made a part hereof; that said sum is due and wholly unpaid.

Wherefore he asks to be made a party in the above suit, and that he be permitted to file said claim and allowed to participate in the dividing of the assets of said John Knight in the above cause, and for all other relief.

JNO. H. McGOWEN,
By WM. D. BYNUM, *Att'y.*

$34.97. INDIANAPOLIS, IND., *May* 13, 1879.

One year after date I promise to pay to the order of John H. McGowan & Co., thirty-four and $\frac{97}{100}$ dollars and ten per cent. attorneys' fees, with interest at seven per cent per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

161 CINCINNATI, *April 19th*, 1879.

Mr. Jno. Knight, Indianapolis, Ind., bought of the John H. McGowan Co., 134 & 136 West Second street.

	Repairing Victor pump		17 00
	Cash paid for fr't & dray		80
	Drayage		35
Apr. 22.	3 2" brass Chapman valves, 6.25	18 75	
	22½ %	4 21	
			14 54
	Sent per A. M. exp.		
	To interest on note given in settlement of above and included in note		2 28
			34 97

And also comes the Buckeye Iron and Brass Works, by Horace Speed, its solicitor, and files its intervening petition herein in the words following, to wit:

The Buckeye Iron and Brass Works, a corporation, shows to the court that said John Knight, in consideration of goods purchased before May 3d, 1879, executed to it his certain promissory note, a copy of which is filed herewith as part hereof, marked Exhibit "A," which remains due and unpaid. A bill of particulars of the goods is also filed herewith as part hereof, marked Exhibit "B."

And the narrator prays leave to file its claim, become a party plaintiff, and share in the fund arising in the above-entitled
162 cause, and for all other and further proper relief.

THE BUCKEYE IRON AND BRASS WORKS,
By HORACE SPEED, *Its Solicitor.*

HORACE SPEED, *Of Counsel.*

"EXHIBIT A."

$475.67. INDIANAPOLIS, IND., *May 7th*, 1879.

One year after date I promise to pay to the order of the Buckeye Iron and Brass Works four hundred and seventy-five & $\frac{67}{100}$ dollars, and ten per cent. attorneys' fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws.

The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

163 DAYTON, OHIO, ——, 188-.

John Knight bought of Buckeye Iron and Brass Works.

1879.				
Jan'y 11.	24 #00 air-cocks, 2.00		4 00	
	24 #0 " 2.25		4 50	
	24 #1 " 2.50		5 00	
	12 #2 cyl. cock, S. S. L. H.		4 70	
	12 #1 comp. gauge-cocks, S. B.		7 00	
	12 #2 " " "		8 00	
			33 20	
	5%		1 66	
				31 54
	For'd exp.			
18.	48 #1 cyl. cocks, S. S. L. H., 4.20		16 80	
	12 #2 " " " "		4 70	
	24 #3 " " " " 5.75		11 50	
	24 #4 " " " " 6.30		12 60	
	12 #5 " " " "		7 65	
	6 #0 water-gauges, 14.00		7 00	
			60 25	
	50 %		3 01	
				57 24

For'd exp.

Feb'y 14.	6	2″ globe-valves,	2.10	12 60
	12	1½″ " "	1.30	15 60
	24	1″ " "	.70	16 80
	24	¾″ " "	.52	12 48
	24	½″ " "	.33	7 92
	12	⅜″ " "	.27	3 24
	12	1″ angle "	.70	8 40
	12	¾″ " "	.52	6 24
	2	2″ " "	2.10	4 20
	12	¾″ Men. steam-stops,	.55	6 60
	12	½″ " " "	.40	4 80
	12	⅜″ " " "	.30	3 60
	6	1″ " " "	.80	4 80
	12	#2 comp. gauge-cocks, S. B.		7 60
	12	#0 Misr. " "		3 00
	12	#1 " " "		3 95
	12	#2 " " "		4 15
	12	#3 " " "		5 03
	6	#3 cyl. lubricators,	.90	5 40
	3	#4 " "	1.15	3 45
	Box & dray.			75
				140 61
	Am't f'w'd			229 39

Forw. P. C. & St. L. R. R.

164	Am't f'w'd			229 39
Feb'y 26.	24	#1 comp. gauge-cocks,	6.65	13 30
Feb'y 26.	24	#2 comp. gauge-cocks,	7.60	15 20
	60	#0 plain oil-cups,	.10½	6 30
	24	#1 " "	.11½	2 76
	12	#2 " "	.13	1 56
				39 12

For'd exp.

M'ch 8.	9	1½″ check-valves,	1.18	10 62
	9	1¼″ "	.88	7 92
	12	1″ "	.60	7 20
	12	¾″ "	.43	5 16
	6	1½″ Med. steam-stop.	1.60	9 60
	12	1¼″ " "	1.15	13 80
	12	1″ " "	.80	9 60
	12	¾″ " "	.55	6 60
	2	1½″ angle check-valves,	1.18	2 36
	6	1½″ angle-valves,	1.30	7 80
	12	1″ globe "	.70	8 40
	12	¾″ " "	.52	6 24
	24	#2 Miss. gauge-cocks,	.45	8 30
	24	#3 " "	5.03	10 06

	24 #0 air-cocks, 1.75		3 50	
	24 #1 " 2.00		4 00	
	Box and dray.		60	
				121 76
	For'd P. C. & St. L. R. R.			
M'ch 25.	2 2″ I. B. safety-valves, 2.25			4 50
	For'd exp.			
27.	24 1″ Med. steam-stops, .80			19 20
	For'd exp.			
Apr. 1.	12 1½″ globe-valves, 1.30		15 60	
	24 1½″ " .33		7 92	
	24 ⅜″ " .27		6 48	
				30 00
	Am't f'w'd			443 97
	For'd exp.			
165	Am't f'w'd			443 97
Apr. 5.	6 ¾″ brass safety-valves, 1.20		7 20	
Apr. 5.	6 1″ brass safety-valves, 1.50		9 00	
	4 2″ I. B. " 2.25		9 00	
	Box & dray.		40	
				25 60
				469 57
	For'd P. C. & St. L. R. R.			
14.	Cr. by am't paid C. E. Pease			25 00
				444 57
	To interest 1 yr., 7 %			31 10
				475 67
	Cr. by note May 7th, '79, 1 yr., 7 %			475 67

And afterwards, to wit, on the 12th day of September, 1882, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now W. & B. Douglas, by W. A. Hughes, their solicitor, and file their intervening petition herein in the words following, to wit:

W. and B. Douglas, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, respectfully shows that the defendant, John Knight was, on and before the 3d day of May, 1879, indebted to your petitioner in the sum of six dollars and twenty-five cents ($6.25) for goods, wares, and merchandise sold and delivered by your petitioner to said defendant, a bill of particulars of which is filed herewith, marked "Exhibit A," which said indebtedness is now due and unpaid.

Wherefore your petitioner shows that it is entitled to share
166 in the distribution of the fund which has been brought into court under the decree in this cause, and it therefore asks that its said claim be allowed and paid out of said fund rateably, and it asks for all proper relief.

W. AND B. DOUGLAS,
By W. A. HUGHES, *Its Solicitor.*

W. A. HUGHES, *Of Counsel.*

EXHIBIT A.

Duplicate bill.

CHICAGO, *Feb'y 14th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of W. and B. Douglas.

1 stock cyl'd, less lap, Fig. 240				5 50
6 styrrups,	"	"	30c.	1 80
12 bolts for top,	"	"	6¼c.	75
12 leathers,	"	"	11c.	1 32
				$9 37
⅓ off				3 12
				$6 25

STATE OF ILLINOIS, } ss:
County of Cook, }

William H. Mooney, being first duly sworn, on oath deposes and says that he is general agent in Chicago, Illinois, of W. & B. Douglas, a corporation existing under and by virtue of the laws of the State of Connecticut; that he is familiar with the business of said corporation; that the above or foregoing account of six and $\frac{25}{100}$ dollars against John Knight, insolvent, is for goods and merchandise by said W. & B. Douglas to said John Knight, insolvent, sold and de-
167 livered; that the account is true and just, and that no part thereof has been paid or satisfied, but that after allowing the said John Knight, insolvent, all his just claims, credits, deductions, and set-offs there is still due and unpaid to the said W. & B. Douglas from the said John Knight, insolvent, the sum of six & $\frac{25}{100}$ dollars.

WILLIAM H. MOONEY.

Subscribed and sworn to before me this 29th day of August, 1882.

[SEAL.] ROBERT VAN SANDS,
Notary Public.

And afterwards, to wit, on the 17th day of October, 1882, at the May term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now Morris, Tasker and Co., by Upton J. Hammond and

William Bossen, their solicitors, and, upon agreement of the parties in interest herein, file their intervening petition in the above cause as of date September 12th, 1882.

And said petition is in the words following, to wit:

Come now Stephen P. M. Tasker, Charles Wheeler, and Thomas W. Brown, doing business as Morris, Tasker and Co., and state and show to the court that they are citizens and residents of the city of Philadelphia, state of Pennsylvania; that the defendant in the above-entitled cause, John Knight, is indebted to said peti-
168 tioners in the sum of $228.08 and interest thereon at 7% per annum from the 11th day of June, 1879, and 10% att'ys' fees, which fees are of the sum of $22.80, as evidenced by a certain promissory note, a copy of which is filed herewith and made a part hereof and marked "Exhibit A;" that said note was given for goods furnished the said John Knight, who was doing business in the city of Indianapolis, Indiana, prior to the 11th day of June, 1879.

That no part of said indebtedness has ever been paid; that there is due thereon the sum of $228.08, with interest from the 11th day of June, 1879, and 10% att'ys' fees, which are of the value of $22.80.

Your petitioners pray that they may be allowed to intervene in this behalf and file their said claim herein and receive such share of the proceeds of the funds in this cause as may seem meet and proper to this honorable court, and that they be allowed to file the said claim as of the 12th day of September, 1882.

"EXHIBIT A."

$228.08. INDIANAPOLIS, IND., *June 11th*, 1879.

One year after date I promise to pay to the order of Morris, Tasker and Co. (Limited) two hundred and twenty-eight & $\frac{8}{100}$ dollars, and ten per cent. attorney's fees, with interest at seven per cent. per annum from date until paid, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received without any
169 relief from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and non-payment of this note.

JOHN KNIGHT.

UPTON J. HAMMOND,
WILLIAM BOSSON,
Atty's for M. F. & Co.

Protested June 14, '80.

J. E., *N. P.*

UNITED STATES OF AMERICA, }
State of Indiana, } *To wit:*

Be it known that on Monday, the 14th day of June, A. D. 1880, I, Jonathan Elliott, notary public, by lawful authority duly commissioned and sworn, living in Indianapolis, in the county of Marion and State aforesaid, at the request of F. P. Woollen, cashier Meridian Nat'l Bank, Indianapolis, Indiana, holders of the original

promissory note hereto attached, after the close of bank hours presented the same at Fletcher's Bank, Indianapolis, Indiana, and demanded payment thereof, the time limited for payment having expired, whereto I was answered: "No funds."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer and endorsers of said note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, dam-
170 ages, and interest suffered or to be suffered for the want of payment of said note, and addressed written notices thereof to the endorsers of the same *and* informing them that they are held liable for the payment of said note; and on the same day, in the evening, I deposited such notices, post-paid, in the post office at the city of Indianapolis, inclosed and addressed "Theo. Kitchen, cash'r Central National Bank, Philadelphia, Pa."

This done and protested, at Indianapolis the day and year above written.

In testimony whereof I grant these presents under my signature and impress of my notarial seal.

[SEAL.] JONATHAN ELLIOTT,
Notary Public.

Fees:	
Protest	50
Record	50
2 notices	50
Postage	03
Total	$1 53

(Duplicate.)

PHILADELPHIA, *February 7th*, 1879.

Mr. John Knight, Indianapolis, Ind., bought of Morris, Tasker and Co., Limited, office 222 South Third street.

1879.			
	2 ea. 1″, 135; 2″, 222, L. H. taps, 357	7 14	
	10 %	71	
			6 43
Feb'y 26.	6 p'ces pipe 5¼″, O. D. x ¾″; hk. x 10′ 6″=780 lbs., 13		101 40
M'ch 11.	6 p'ces pipe 5¾″, O. D. x ¼″; hk. x 10′ 6″=925 lbs., 13		120 25

171 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Before me, the subscriber, a notary public duly commissioned by the Commonwealth in and for said State, personally appeared H. J. Kaltenthaler, a book-keeper in the employ of Morris, Tasker and Company, Limited, who, being duly sworn according to law, doth depose and say that the annexed account against John Knight, of Indianapolis, Indiana, is correctly copied from the books of the origi-

nal entry of Morris, Tasker and Co., Limited; that the charges were made in said books at or about the time of their respective dates; that the goods for which said charges were made were sold and delivered as charged; that the charges are correct and the account just and true as stated; that there is now due and owing thereon the sum of two hundred and twenty-eight $\frac{8}{100}$ dollars, with interest from March 11th, 1879; that no part of said sum has ever been paid or in any manner settled, and that there are no deductions or offsets of any kind, except such as are therein specified and credited; and, furthermore, the said Morris, Tasker and Co., Limited, holds no collaterals or securities of any kind for securing the payment of the said debt or claim; that the said John Knight gave a note to said firm for the above amount, but the same has never been paid, and the said Morris, Tasker and Company still have the same in
172 their possession, the said note for $228.08 being the note herein referred to.

H. J. KALTENTHALER.

Sworn and subscribed before me this 17th day of October, 1882.

In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

[SEAL.] A. P. RUTHERFORD,
Notary Public.

173 And afterwards, to wit, at the November term of said court, on the 10th day of November, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, master in chancery, and files his report under the order of reference therein of August 18, 1882, in the words following, to wit:

To the honorable court:

The undersigned, the master to whom this cause was referred to take evidence and report the amounts due to the several intervening petitioners herein, respectfully reports—

That John Knight was sworn and examined before me, and his evidence as written out by me is attached hereto and made part of this report. The exhibits referred to are with the intervening petitions which are returned into court with this report.

At the hearing the attorneys for the several petitioners as named in the accompanying schedule were present, and Mr. Rand appeared for Fletcher and Churchman, Mr. Speed for complainants, and Mr. Winter for Mr. Knight.

The attached schedule shows the amounts due the several claimants to Oct. 1st, 1882.

I also append a pencil memorandum showing the computations.

Respectfully submitted.

WILLIAM P. FISHBACK, *Master.*

Schedule.

No. of claim.	Name of claimant.	Name of att'y.	Am't.
1	Jno. C. Brinkmeyer	J. M. Winters	35 18
2	F. Lunkenheimer	J. M. Judah	101 70
174			
3	Wm. T. Barbee	Jno. R. Wilson	2,722 72
4	Traber & Aubery	Mr. Swift	727 44
5	McGowan & Co.	Mr. Bynum	44 64
6	Stacey M'f'g Co.	Ayres & Brown	8 25
7	Richmond Stove Co.	"	72 62
8	Thomas Maddock	"	93 60
9	Crane Bros. M'f'g Co.	"	71 37
10	Peck Bros. & Co.	Mr. Florea	334 72
11	Rumsey & Co.	"	70 65
12	B. F. Goodrich & Co.	"	220 20
13	George P. Bissell, trustee	Mr. Bradbury	559 45
14	Conn. Mut. Life Ins. Co.	Mr. Sullivan	1,175 96
15	Horace Parrott (bo't by Mrs. Knight at 20 cts. on the dollar).	Mr. Hughes	557 86
16	Eaton, Cole & Burnham Co.	Mr. Hughes	81 43
17	Castle & Hitchcock (bo't by Mrs. K. at 20 cts.).	"	128 93
18	Reading Iron Works	"	566 07
19	J. L. Mott Iron Works	"	153 92
20	Chapman Valve M'f'g Co.	"	169 25
21	American Rubber Co.	"	37 50
22	Watson & McDaniel	"	46 20
23	Chas. A. Blessing	"	9 25
24	Blake Steam Gauge Co.	"	16 05
25	W. and B. Douglas	"	6 25
26	Fieldhouse, Dutcher and Belden	"	51 30
27	Ramei and Torrey	"	34 50
28	Dean Bros. (bo't by Mrs. Knight at 30 cts.).	"	20 30
29	Buckeye Iron and Brass Works	Mr. Speed	611 03
30	A. M. Byers & Co.	"	1,914 54
31	Blatchford and Co.	"	1,781 97
32	Hamilton Rubber Co.	"	328 82
33	Joshua Rhodes	"	431 59
175			
34	Hayden Co.	"	195 97
35	Goulds M'f'g Co.	"	697 40
36	Mooney, Taylor and Smith	"	53 72
37	Abendroth Bros.	"	132 39
38	L. Wolff M'f'g Co.	"	322 52
39	Walworth M'f'g Co.	"	1,721 73
40	Morris, Tasker and Co.	Mr. Bosson	308 86

W. P. FISHBACK, *Master.*

Claim 41.

L. Maxwell and Son allowed int. to Oct. 1st, 1882, $168.70.

The Maxwell & Son claim was presented after the date of the filing of this report on the assurance of counsel that there was no objection thereto.

WILLIAM P. FISHBACK, *Master.*

Computation on Claims. Am'ts Due Oct. 1st, 1882.

No. 1.	Brinkmeyer note	$26 12
	July 5th, '79, to Oct. 1st, '82, 3 yrs. 2 mos. 20 d., 7%	5 86
		$31 98
	Attorneys' fees, 10%	3 20
		$35 18
No. 2.	Lunkenheimer note	$84 36
	Int. May 14th, '81, to Oct. 1st, '82, 1 yr. 4 mos. 16 d., 7	8 10
		$92 46
	Attorneys' fees	9 24
		$101 70
176 No. 3.	Barbee judg't, June 27th, '82	$2,681 16
	3 mos. 3 days, 6%	41 56
		$2,722 72
No. 4.	Traber & Aubery bal. notes	$392 50
	Interest	322 93
		$715 43
	Deduct dividend	22 59
		$692 84
	Attorneys' fees	34 60
		$727 44
No. 5.	McGowan and Co. note	$34 97
	Int. May 13, '80, to Oct. 1, '82, 2 yrs. 4 mos. 17 d., 7%	3 39
		$38 36
	Attorneys' fees	3 83
		$42 19
	Int. —	2 45
		$44 64

No. 6.	Stacey M'f'g Co. account	$8 25
No. 7.	Richmond Stove Co. account	$72 62
No. 8.	Thomas Maddock account	$93 60
No. 9.	Crane Bros. M'f'g Co. note	$55 40
	Int. May 12, '80, to Oct. 1st, '82, 2 yrs. 5 mos. 18 d., 7%	9 49
		$64 89
	Attorneys' fees	6 48
		$71 37
177	No. 10. Peck Bros. & Co. note	$246 25
	Int. May 16, '79, to Oct. 1, '82, 3 yrs. 4 mos. 14 d., 7%	58 07
		$304 32
	Att'ys' fees	30 40
		$334 72
No. 11.	Rumsey & Co. acc't, bal.	$70 65
No. 12.	Akron Rubber Works acceptance	$129 68
	Int. July 20, '80, to Oct. 1, '82, 2 yrs. 2 mos. 10 days	17 12
	Acc't	73 40
		$220 20
No. 13.	Bissell & Co. bal. judgment	$559 45
No. 14.	Conn. Mu. Life Ins. Co. bal. decree	$1,175 96
No. 15.	Horace Parrott bal. decree	$557 86
	Mrs. Knight, 20 cts.	
No. 16.	Eaton, Cole & Co. note	$63 21
	Int. May 16, '80, to Oct. 1, '82, 2 yrs. 5 mos. 14 days, 7%	10 82
		$74 03
	Attorneys' fee	7 40
		$81 43
No. 17.	Castle and Hitchcock note	$88 34
	Int. June 19, '79, to Oct. 1, '82, 3 yrs. 3 mos. 11 days, 10%	28 87
		$117 21
	Attorneys' fees	11 72
		$128 93

Mrs. Knight, 20 cts.

178	No. 18. Reading Iron Works note	$495 80
	Int. May 20, '80, to Oct. 1, '82, 2 yrs. 4 m. 10 days, 6 %	70 27
		$566 07
	No. 19. J. L. Mott Iron Works note	$120 00
	Int. May 16, '80, to Oct. 1, '82, 2 yrs. 4 mos. 14 days, 7 %	19 92
		$139 82
	Attorneys' fees	14 00
		$153 92
	No. 20. Chapman Valve Co. acc't	$141 05
	Interest	28 20
		$169 25
	No. 21. American Rubber Co. acc't	$37 50
	No. 22. Watson and McDaniel acc't, bal.	$46 20
	No. 23. Blessing account	$9 25
	No. 24. Blake Steam Gauge Co. acc't	$16 05
	No. 25. W. & B. Douglas acc't	$6 25
	No. 26. Fieldhouse, Dutcher and Co. acc't	$51 30
	No. 27. Ramei & Torry acc't	$34 50
	No. 28. Dean Bros. acc't	$20 30
	Mrs. Knight, 30 cts.	
179	No. 29. Buckeye Iron and Brass Works note	$475 67
	Int. May 7, '80, to Oct. 1, '82, 2 yrs. 4 mos. 23 d., 7 %	79 82
		$555 49
	Attorneys' fees	55 54
		$611 03
	No. 30. A. M. Byers & Co. acceptance	$873 96
	Int. July 24, '79, to Oct. 1, '82, 3 yrs. 2 mo-. 6 days, 6 %	166 93
	Acceptance	731 10
	Int. 3 yrs. 3 mos., 6 %	142 55
		$1,914 54

No. 31.	E. W. Blatchford and Co. note	$1,006 66
	Int. Jan. 1, '79, to Oct. 1, '82, 3 yrs. 4 mo-., 10%	335 33
	Note	267 83
	Int. May 20, '80, to Oct. 1, '82, 2 yrs. 4 mos. 10 d., 6 %	37 96
		$1,647 78
	Att'ys' fees on $1,341.99	134 19
		$1,781 97
No. 32.	Hamilton Rubber Co. note	$282 21
	Int. May 14, '80, to Oct. 1, '82, 2 yrs. 4 mos. 16 days, 7 %	46 61
		$328 82
No. 33.	Joshua Rhodes note	$381 95
	Int. May 13th, '81, to Oct. 1st, '82, 1 yr. 4 m. 17 d., 6 %	49 64
		$431 59
No. 34.	Hayden Co. note	$152 63
	Int. May 12, '80, to Oct. 1, '82, 2 yrs. 4 m. 18 d., 7 %	25 53
		$178 16
	Attorneys' fees	17 81
		$195 97
180 No. 35.	Goulds M'f'g Co. acceptance	$253 12
	Int. May 15th, '79, to Oct. 1, '82, 3 yrs. 4 mos. 15 d.	51 23
		$304 35
	Account	393 05
		$697 40
No. 36.	Mooney, Taylor & Smith acc't	$53 72
No. 37.	Abendroth Bros. acc't	$132 39
No. 38.	L. Wolff M'f'g Co. acc't	$322 52
No. 39.	Walworth M'f'g Co. acc't	$545 64
	Acceptance	488 54
	Int. June 3d, '79, to Oct. 1st, '82, 3 yrs. 4 mos., 6 %	97 78
	Acceptance	488 54
	Int. 3 yrs. 5 mos.	101 23
		$1,721 73

No. 40. Morris, Tasker & Co. note	$228 08
Int. June 11, '79, to Oct. 1, '82, 3 yrs. 3 m. 19 d., 7 %	52 71
	$280 79
	28 07
	$308 86

JOHN KNIGHT, being duly sworn, deposes and says:

Brinkmeyer. No. 1.

The note shown to me given to Brinkmeyer is correct. I signed the note. Exhibit No. 1. No part of this note has been paid—note dated July 5th, 1879, $26.12, at one year, 7 % interest.

181 Lunkenheimer. No. 2.

This note was for brass goods bought within 60 or 90 days before May 3d, 1879. Interest paid to May 14th, 1881. Exhibit No. 2. Last bill of goods purchased Feb. 28th, '79; purchases run from Nov. 5, '78, to Feb. 28th, '79; note dated May 14th, 1879, $84.36, at 1 year, seven per cent.; proved; paid to maturity.

W. T. Barbee. No. 3.

Judgment. See Exhibit No. 3. (Question about costs.) Debt contracted during year 1877—July 16th, 1877. It was admitted that Barbee recovered judgment June 27th, 1882, for $2,681.16; June 30th, '82, issued execution, which was returned *nulla bona.*

Traber & Aubery. No. 4.

This note was endorsed by me, John Knight; given to me by Greenleaf M'f'g Co. and indorsed by me. I supposed this note had been paid long ago. Mr. Jno. W. Ray said he would see it paid. Note Exhibit 4. Greenleaf M'fg Co. adjudicated bankrupt June 12th, 1874. Note dated March 4, 1874. I was surety; note, $392.50, 10% at 4 months; credit by dividend in bankruptcy, $22.59—Aug. 26th, '78.

John H. McGowan Co. No. 5.

Note shown me was given for pumps, as I remember, or repairing pumps, and for brass Chapman valves; goods bought April 19th & 22d, 1879. Note Exhibit 5. Note is due and no part has been paid, so far as I know; note May 13th, 1879, $34.97, at 7% at one year; interest paid at maturity.

Stacey M'f'g Co. No. 6.

182 Account shown is for one lamp-post; is correct; purchase made Jan'y 16th, 1879; no part paid. Exhibit 6 is attached to the petition. Amount, $8.25.

Richmond Stove Co. No. 7.

Account attached to petition is correct; goods purchased from Sept. 1, 1878, to March 17th, 1879, as shown in petition; no part paid that I know of. Am't, $72.62.

Thomas Maddock. No. 8.

Account attached to petition is correct; goods purchased Feb. 23d, 1879; no part of account paid. Am't, $93.60.

Crane Bros. M'f'g Co. No. 9.

Note May 12th, 1879, $55.40, at 1 year, 7%; int. paid to maturity. Goods purchased from March 14th to April 7th, 1879. No part of note has been paid. Exhibit 9.

Peck Bros. & Co. No. 10.

Note given for brass goods; goods purchased from April 1st to April 30th, 1879; no part of note paid. The note includes interest on account for one year to May 16th, 1880, at 7 per cent. Exhibit 10. Note for $246.25, dated May 16th, 1879, at one year.

Rumsey & Co. No. 11.

Account attached to the petition is for goods purchased from Feb'y 12th, 1879, to April 19th, 1879. There should be a credit on the account of $4.80 for goods returned, leaving a balance of $70.65. The account is for pumps.

B. F. Goodrich & Co. No. 12.

183 Account and note or acceptance. Acceptance is for goods purchased Jan. 16 & Feb. 6, 1879, $129.68; accepted M'ch 6th, 1879; no part paid. Exhibit 12th. Interest from July 20th, 1879. Account is for goods purchased April 7th, 1879; rubber goods; balance of account, $73.40, which is due and unpaid. Akron Rubber Works and B. F. Goodrich and Co. are the same.

George P. Bissell, trustee. No. 13.

Balance due on decree of foreclosure No. 23,910, Marion superior court, May 19th, 1879. Balance due to date, Sept. 21st, 1882, $559.45. Mortgage and note dated and debt contracted prior to Jan'y 1st, 1875.

Conn. Mu. Life Ins. Co. No. 14.

Balance of 2 decrees of foreclosure, #25,196–25,647, in Marion superior court, dated Nov. 5th, 1879, Feb'y 4th, 1880.

Bal. due on #25,196, $314.03, including int. to Aug. 1st, '82.
" " " 25,647, $861.93, " " " " "

Record shows that debts on which these decrees were rendered were contracted prior to Jan. 1st, 1877. Mrs. Knight has purchased

the balances due on these decrees at 30 cents on the dollar since this suit was commenced.

Horace Parrott. No. 15.

This is for balance due on decree of foreclosure upon note and mortgage dated April 28th, 1876. Decree rendered M'ch 4th, 1880, in 25,975. superior court, Marion Co. Bal. due Aug. 1st, 1882, $557.86. Mrs. Knight bought this claim at 20 cents on the dollar since this suit was commenced.

Eaton, Cole and Burnham Co. No. 16.

184 Note, May 16th, 1879, $63.21, int. at 7 %; interest included to May 19th, 1880. This note — for goods purchased March 1st and March 11th and April 11, 1879; no part has been paid.

Castle & Hitchcock. No. 17.

Note, April 19th, 1879, $88.34, 10% att'ys fees & 10% interest; given for goods bought prior to April 19th, 1879; no part of this note has been paid. Mrs. Knight bought the note at 30 cents on the dollar since suit was brought. Exhibit 17. Interest paid to maturity.

Reading Iron Works. No. 18.

Note dated November 17th, 1879, $495.80, at 6 mo's, for goods, iron pipe, purchased Nov. 8th, 1878; no part paid. Exhibit 18.

J. L. Mott Iron Works. No. 19.

Note, May 16th, 1879, at 1 year, $120; 10% attorneys' fees; interest at 7 %; interest included to May 19th, 1880. Note given for goods bought December 16th, 1878; Feb. 6th & Feb, 28th, 1879; no part has been paid.

Chapman Valve M'f'g Co. No. 20.

Account attached to petition for $141.05 and interest, $28.20. I believe this account is correct and no part of it paid. This debt was contracted prior to May, 1879.

American Rubber Co. No. 21.

Account is for goods purchased April 8th, 1879. Balance due is $37.50, and none of this has been paid.

185 Watson and McDaniel. No. 22.

This is the same as James Watson; is for goods consigned, and balance due from me was $46.20; debt was incurred April 13th, 1878, no part of which is paid.

Charles A. Blessing. No. 23.

Is an account for $9.25, debt contracted April 30, 1879; no part has been paid.

Blake Steam Gauge Co. No. 24.

This is for balance on account for goods purchased as shown in the account, and on July 3d and Sept. 16th, 1878; balance is $16.05; no part of which is paid.

W. & B. Douglas. No. 25.

Account for goods purchased Feb'y 4th, 1879; balance due, $6.25; no part paid.

Fieldhouse, Dutcher and Belden. No. 26.

Account for goods purchased M'ch 14th, 1879; balance due, $51.30; no part paid. Mrs. Knight bought this since suit at 30 cts. on the dollar.

Ramei and Torrey. No. 27.

Account for goods purchased M'ch 14th, 1879; $34.50, balance due, and no part has been paid.

Dean Brothers. No. 28.

186 Account for goods bought prior to March 1st, 1879; balance is $20.30. Mrs. Knight bought it since this suit was brought at 30 cts. on the dollar.

Buckeye Iron and Brass Works. No. 29.

This is a note, May 7th, 1879, at 1 year, $475.67, at 7% interest; one year's interest included in note; goods were purchased between Jan'y 11th and April 5th, 1879, and no part of the debt has been paid. Goods were purchased at times indicated in the account.

A. M. Byers and Co. No. 30.

Two acceptances, one Feb'y 26th, 1879, accepted March 5th, 1879, for $731.10, at 4 mo's, and one March 21st, 1879, accepted March 29th, 1879, for $873.96, at 4 mo's. Goods purchased all before drafts were accepted; the goods, at least one bill of $873.96, were purchased probably in February, but did not arrive at Indianapolis until April 10th, 1879.

E. W. Blatchford & Co. No. 31.

Two notes, one March 1st, 1879, for $1,006.66, at 90 days, and one, May 20th, 1879, at 1 year, for $267.83; notes given for goods purchased between M'ch 4th, 1879, and April 18th, 1879; no part of the notes has been paid. Goods for which $1,006.66 note was given were bought, according to my recollection, some time in February, 1879; I think so because note — given March 1, 1879; they may have arrived about the last of February, 1879. The ledger entries in account of petitioners are as follows:

Dr.—Jan. 23, '79, freight, 3.70; M'ch 1, bills p., $1,006.66;
187 M'ch 14, cash $157.68; M'ch 28, cash 90 cts.

Cr.—Jan. 16, $157.68; Jan. 29, $3.70; M'ch 4, $91.26; M'ch 4, $576.70; M'ch 28, $35.67; Apr. 18, $144.00; April 8, $386.68.

Goods were all purchased before the notes were given. I did not keep the books, and know nothing personally about these entries.

Hamilton Rubber Co. No. 32.

One note, May 14th, 1879, $282.21, at 1 year, payable to and endorsed by me; one year's interest added in.

Note given for goods purchased between April 10 and April 29th, 1879; they may have been purchased before that; the dates I gave are from the ledger entries. No part of this note has been paid.

Joshua Rhodes. No. 33.

One note, Aug. 13th, 1880, for $381.95, at 9 mos. This note was given for goods purchased Feb'y 10th and 17th, 1879. No part paid. Note includes interest until due.

Hayden Co. No. 34.

One note, May 12th, 1879, for $152.63, at one year. Note was given for brass goods purchased in December, 1878. No part of it has been paid. Ledger entries are as follows:

Dr.—Nov. 16th, '78, $6.99; Feb. 12th, '79, $3.00.

Cr.—Dec. 21, cash, $6.99, Jan. 23, $94.38; Jan. 2d, $51.27.

Goulds M'f'g Co. No. 35.

One acceptance, Feb. 15th, 1879, for $253.12, at 90 days.

188 Acceptance for goods bought prior to Jan'y 17, 1879. No part of note is paid. There is an account for $393.05; this is for goods bought two or three weeks prior to the dates of the items on account set out with the complaint or petition, according to the best of my knowledge. I cannot tell whether they were received before these dates or not; probably they were received a day or two later than — dates on that account. No part of the account paid.

Mooney, Taylor & Smith. No. 36.

W. T. Mullen, being sworn, says: I am book-keeper of claimants. I sold goods to amount of $6.00. It is for 50 feet 1-inch 3-ply rubber hose at $6.00 net. This is included in acc't for $53.72, all of which is due, and no part has been paid. I sold the hose April 26th, 1879.

John Knight resumed.

Abendroth Brothers. No. 37.

Acc't for $132.39 is correct, and is for goods purchased about first of March, 1879, and delivered here about April 1st, 1879. No part of that account was paid.

L. Wolff M'f'g Co. No. 38.

Acc't for $322.52 is correct, and is for goods purchased from Feb'y 1 to April 1st, 1879, and were received here from February 21st, to April 22d. Feb'y 21, $138.90; M'ch 24th, $7.00; April 5, $10.24; April 5, $154.70; April 10, $8.50; April 22d, $318; these are dates of arrival; goods may have been purchased two weeks before these dates. No part has been paid.

189 Walworth M'f'g Co. No. 39.

Acc't for $545.64. No part of that is paid, and it is correct. I owe, in addition, one acceptance, Feb'y 3d, 1879, at 90 days, for $488.54; one acceptance, Feb'y 3d, 1879, at 120 days, for $488.54.

These acceptances — given for goods all purchased before December 28th, 1878, and no part of them has been paid.

Morris, Tasker & Co. No. 40.

A note for $228.08, dated June 11th, 1879, due one year, 7% interest and attorneys' fees; nothing paid; note for goods bought, as follows:

Feb'y 7th, 1879		$6 43
" 26th, "		101 40
M'ch 11 "		120 25
		$228 08

190 And afterwards, to wit, at the November term of said court, on the 27th day of November, 1882, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now certain intervening petitioners herein, by Horace Speed, their solicitor, and file their exceptions to the report of William P. Fishback, master in chancery, in the words following, to wit:

Exceptions taken by the Hamilton Rubber Company, the Goulds Manufacturing Company; James E. Mooney, William A. Taylor, and William H. Smith, as copartners as Mooney, Taylor and Smith; Abendroth Brothers, a corporation; the L. Wolff Manufacturing Company, the Walworth Manufacturing Company, each severally for his own interest excepts to the report of the master, William P. Fishback, to whom it was referred to report the amounts due the several intervening petitioners in the above-entitled cause:

First. Said Hamilton Rubber Co. excepts for that the said master has not allowed any attorneys' fees, as provided in the note held by it, and therefore has allowed $328.82, whereas he ought to have allowed $361.70.

Second. Said Goulds Manufacturing Company excepts for that the said master has not allowed any interest upon its account (which was, as appears by the evidence, bought on 60 & 90 days' time), whereas he should have allowed at least $78.60 as interest, making the total sum properly to be allowed $776.00 instead of $697.40, as he reported.

Third. Said Mooney, Taylor and Smith except for that the
191 said master has not allowed any interest upon their account (which was, as appears by the evidence, bought on 60 days' time), whereas he should have allowed $9.66 as interest, making the total sum properly to be allowed $63.38 instead of $53.72, as he reported.

Fourth. Said Abendroth Brothers excepts for that the said master has not allowed any interest upon its account (which was, as appears by the evidence, bought on 90 days' time), whereas he should have allowed $25.46 as interest, making the total sum properly to be allowed $157.85 instead of $132.39, as reported by him.

Fifth. Said L. Wolff Manufacturing Co. excepts for that the said master has not allowed any interest on its account (which the evidence shows was bought on 90 days' time), whereas he should have allowed $64.50 as interest, making the total sum properly to be allowed $387.02 instead of $322.52, as reported by him.

Sixth. Said Walworth Manufacturing Company excepts for that the said master has not allowed any interest on its account (which the evidence shows was bought on 90 days' time), whereas he should have allowed $109.99 as interest, making the total sum properly to be allowed $1,830.82 instead of $1,721.73.

192 In all of which particulars said intervenors, speaking and excepting each of and for his own claim solely, say that the report of the said master is, as they severally are advised, erroneous, and the said intervenors, each for his own claim solely, appeals therefrom to the judgment of this honorable court.

HORACE SPEED,
Solicitor for Each of said Intervenors.

HORACE SPEED, *Of Counsel.*

And afterwards, to wit, on the 27th day of January, 1883, at the November term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now L. Maxwell and Son, by Duncan, Smith and Duncan, their solicitors, and, upon agreement of the parties in interest herein, file their intervening petition in the above-entitled cause as of date September 12th, 1882.

And said petition is in the words following, to wit:

Your petitioners, Lawrence Maxwell and Lawrence Maxwell, Jr., citizens of the State of Ohio and doing business under the firm name and style of L. Maxwell & Son, respectfully show that the defendant herein, John Knight, was, on and before the 3d day of May, 1879, indebted to your petitioners in the sum of one hundred and twenty-six dollars and twenty-six cents ($126.26) for goods, wares, and merchandise sold and delivered by your petitioners to said
193 defendant. Said indebtedness is evidenced by the promissory note of said defendant, John Knight, a copy of which is filed herewith and made part hereof, marked "Exhibit A," which said indebtedness is now due and wholly unpaid.

Wherefore your petitioners show that they are entitled to intervene and share in the distribution of the fund which has been brought into court under the decree in this cause, and they therefore ask that their said claim be allowed and paid out of said fund rateably, and they ask for all other proper relief.

DUNCAN, SMITH AND DUNCAN,
Solicitors for Petitioners.

DUNCAN, SMITH AND DUNCAN,
Of Counsel.

EXHIBIT "A."

$126.26. INDIANAPOLIS, IND., *May 14th*, 1879.

One year after date I promise to pay to the order L. Maxwell & Son one hundred and twenty-six & $\frac{26}{100}$ dollars in the gold coin of the United States, with interest at the rate of seven per cent. per annum from date until paid and with ten per cent. attorneys' fees, negotiable and payable at Fletcher's Bank, Indianapolis, Indiana, value received, without any relief whatever from valuation or appraisement laws. The interest on this note has been paid to maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note.

JOHN KNIGHT.

194 And afterwards, to wit, on the 9th day of March, 1883, at the November term of said court, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Horace Speed, Esq., and files his petition for an allowance of counsel fees in the above-entitled cause in the words following, to wit:

The undersigned, Horace Speed, respectfully petitioning, shows to your honors that since the filing of intervening petitions in this case he has had entire charge of the actual litigation, except the mere proving of the amounts of such claims before the master, in behalf of all said intervening petitioners, and has, at the request of many of them and with the acquiescence of all of them, moved, after the claims of the original complainants had been set at rest by the finding of this court, — obtained an order of this court permitting all the other creditors of said John Knight (*i. e.*, these intervening petitioners) to come in, prove their claims, and share in the fund remaining after the original complainants shall have been satisfied, and has seen to the proper proving of such claims, and has argued their case before this court and obtained an allowance of said claims as the same are set out in the decree in this cause, dated —— —; that each of said claims was individual and particular and had to be studied with reference to questions which might arise as to
195 each; that your petitioner was employed by only a portion of such intervening petitioners, but that all of such intervening petitioners have had the benefit of your petitioner's services, and through his services their claims have been allowed, and by said

decree their payment has been provided for, but that the defendants have not ceased the litigation and propose by appeal, a bill of review, or otherwise to further continue it.

That all of said intervening petitioners are deriving a common benefit from the services of your petitioner in behalf of the intervening petitioners, and that all of them ought to pay some reasonable fee for such services; and your petitioner herewith files the written consent of the large proportion of said intervening petitioners, both in number and amount; that twenty-five per cent. of the sums recovered by them may be allowed your petitioner as such reasonable fee.

And your petitioner further shows that after his services had made such claims valuable some of the intervening petitioners made settlements with the solicitors for the defendants, and that if such settlements are allowed said claims will pass to the hands of said solicitors or those they represent without payment of anything to your petitioner.

Wherefore your petitioner prays your honors that such a per cent. upon each of said claims be allowed him as may be a just compensation for his services to said intervening petitioners, and
196 that the same be required to be paid out of their several dividends, and that his rights be fully protected as to any settlements which have been or may hereafter be made.

And your petitioner will ever pray, &c.

HORACE SPEED.

197 And afterwards, to wit, at the November term of said court, on the 12th day of March, 1883, before Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective counsel, and Horace Speed, of counsel for the intervening petitioners, moves the court to sustain their exceptions to the master's report herein; and the court, having heard the evidence and the report and the arguments of counsel, and having maturely considered the same, does now sustain said exceptions and does, except so far as said exceptions affect it, sustain and approve said report.

And the counsel for the complainants and the intervening petitioners now move the court for decrees in their favor upon said report and the pleadings and evidence in this cause.

And the court, having heard the arguments of counsel thereon, and having maturely considered the pleadings and evidence herein, sustains said motion and finds that the equities of the case are with petitioners, and that there is due complainants and said petitioners the sums set opposite their names, respectively, to wit:

Pliny Jewell & Sons	$491 92
Spang, Chalfant & Co.	1,146 94
McGowan & Co.	41 66
Richmond Stove Co.	14 96
Crane Bros. M'f'g Co.	56 01
Peck Bros. & Co.	281 51

Rumsey & Co.	85 06
Akron Rubber Co.	88 17
Eaton, Cole & Burnham	12 99
Chapman Valve Co.	61 35
American Rubber Co.	45 55
C. A. Blessing	11 21
Buckeye Brass and Iron Works	65 16
Byers & Co.	1,063 97
Blatchford & Gates	312 59
Hamilton Rubber Co.	337 57
Gould M'f'g Co.	477 51
Mooney, Taylor & Smith	62 20
Abendroth Bros.	160 84
L. Wolf M'f'g Co.	222 15
Walworth M'f'g Co.	175 84
Maxwell & Sons	151 34
Total	$5,366 50

The said complainants and intervening petitioners are entitled to decrees for said sums, respectively, and to a priority; that the sale by John Knight to his co-respondents was fraudulent and void as to his creditors, and that the value of the goods as transferred was $14,606.40.

And the court further finds that there is also due to intervening petitioners and to said Eliza J. Knight and Fletcher & Churchman the sums set opposite their respective names, and that upon such sums they are entitled to a *pro rata* share of the surplus remaining of said $14,606.40 after the above-named complainants' and petitioners' claims shall have been paid: Provided, That upon the claim of Horace Parrott, assigned to Eliza J. Knight, she shall receive only twenty per cent. of the amount thereof.

198	Amount of claim.	Pro rata share.
J. C. Birnckmeyer	$36 06	$9 73
F. Lunkenheimer	104 78	28 29
W. T. Barbee	2,800 26	756 07
Traber & Aubrey	733 53	198 05
Stacy M'n'f'g Co.	10 12	2 73
Richmond Stove Co.	73 45	19 83
Thomas Maddocks	114 36	30 87
Crane Bros. M'n'f'g Co.	13 64	3 68
Peck Bros. & Co.	28 15	7 60
Akron Rubber Co.	158 21	42 71
George P. Bissell	574 08	155 00
Eaton, Cole & Burnham	69 76	18 83
Reading Iron Works	579 55	156 47

	Amount of claim.	Pro rata share.
Mott Iron Works	157 85	42 61
Chapman Valve Co.	111 19	30 02
Watson & McDaniel	65 70	17 73
Blake Steam Gauge Co.	20 05	5 40
W. & B. Douglas	7 60	2 05
Ramie & Torrey	42 06	11 35
Buckeye Brass and Iron Works	562 14	151 77
Byers & Co.	892 02	240 84
Blatchford & Gates	1,522 57	411 09
Joshua Rhodes	423 63	114 38
Hayden Co.	201 01	54 27
Gould M'n'f'g Co.	311 91	84 21
Mooney, Taylor & Smith	2 75	74
L. Wolf M'n'f'g Co.	180 08	48 62
Walworth M'n'f'g Co.	1,684 17	454 72
Morris, Tasker & Co.	316 73	85 51
Hamilton Rubber Co.	33 75	9 11
Maxwell & Son	15 13	4 08
	$11,846 29	$3,198 36
Assigned to Eliza J. Knight:		
Horace Parrott	572 45	114 49
Castle & Hitchcock	133 18	35 95
Dean Bros.	24 60	6 64
Feldhouse, Dutcher & Belden	62 08	16 76
Connecticut Mutual Life Insurance Company	1,205 34	325 44
Eliza J. Knight	10,361 00	2,797 38
Fletcher & Churchman	10,166 66	2,744 90
		$9,239 92

Wherefore it is now ordered, adjudged, and decreed that said sale be annulled and set aside as fraudulent and void as to creditors, and the respondents, John Knight, Eliza J. Knight, and said Churchman, surviving partner of the firm of S. A. Fletcher & Co., be and are held and decreed to be trustees for these petitioners for the sums so found to be due and payable, and are required to pay the same, except the *pro rata* dividends accruing upon the claims in their own favor or assigned to them, respectively, which they shall retain, into the registry of this court within sixty days, and also the costs of this suit, taxed at $—.

199 And the court, having considered the petition of Horace Speed, counsel for some of the intervening petitioners herein, heretofore filed in this cause, asking an allowance for fees as against in-

tervening petitioners not represented by him, now finds that the allowance should be made him as against intervening petitioners not represented by him, but who derive a common benefit from the litigation prosecuted by him on behalf of said intervening petitioners, it is therefore ordered that the clerk of this court do reserve from the sums paid in to the use of such intervening petitioners twenty-five per cent. of the amounts payable to them, respectively, and pay over the sums so reserved to Horace Speed: Provided, however, That this shall not apply to the claims in favor of or assigned to said Fletcher & Churchman or Eliza Knight.

And now come said Eliza J. Knight and Francis M. Churchman, surviving partner of said Fletcher & Churchman, and ask leave to file a petition for a rehearing of this cause, and leave is now granted to file such petition; and thereupon said Eliza J. Knight and Francis M. Churchman file their petition for a rehearing in the words and figures following, to wit:

Petition for Rehearing.

To the honorable the judges of said circuit court:

The petition of said Eliza J. Knight and Francis M. Churchman, defendants in said cause, respectfully shows:

That on the 9th day of May, 1881, the complainants in the above-entitled cause exhibited their bill of complaint in this court against the above-named defendants, Eliza J. Knight and Francis M. Churchman, and John Knight and one Stoughton J. Fletcher, then in life, but since deceased, and which bill stated—

That on the 27th day of December, 1878, and on the 1st day of May, 1878, and continuously between those dates, said John Knight was, and for a long time prior thereto had been, in business in his own name, in the city of Indianapolis, in the purchase, manufacture, and sale of machine supplies, and having as such good standing and credit with said complainants and among merchants, and making frequent purchases on credit in the cities of Hartford and New York, and many other places, from said complainants and others.

That the complainants composing the firm of Spang, Chalfant & Co., relying upon said John Knight's good reputation and credit, sold to him on credit, on the 27th day of December, 1878, goods, wares, and merchandise for the sum of $75.00, and on the 7th day of April, 1879, other goods, wares, and merchandise upon credit for the sum of $—, neither of which sums or any part thereof have ever been paid, and that said complainants, Spang, Chalfant & Co., had, on the 3rd day of May, 1881, recovered judgment on the law side of this court against said Knight for said indebtedness for the sum of $1,032.00, and on the 4th day of May, 1881, had caused an execution to be issued on said judgment, which on the same day had been returned "*nulla bona*."

200 That on the 14th day of April, 1879, said John Knight had accepted a draft drawn on him by said complainants, composing the firm of P. Jewell & Sons, dated February 2, 1879, and payable six months after date, for the sum of $379.36, the value of

certain goods, wares, and merchandise theretofore sold by them to him, and thereafter, having frequently promised to pay said draft, he purchased from them other goods, wares, and merchandise on credit, to the amount of $—; that neither said draft or account, or either or any part of them, had ever been paid, and that on the 23rd day of March, 1881, said P. Jewell & Sons obtained judgment in the superior court of Marion county, Indiana, against said Knight thereon for the sum of $440.20, and caused execution thereon to be issued, which was returned on the 22nd day of April, 1881, *nulla bona*.

That on or about the 24th day of January, 1879, suits had been instituted in the said superior court of Marion county, Indiana, against said John Knight upon certain notes and to foreclose mortgages securing them and others, which covered all his real estate, he having failed some time before to pay the interest due on said notes; that on or about May 19, 1879, he having made no defense thereto, decrees were rendered aggregating $45,867.85, for $28,770.90, of which said Knight was personally liable; and that said aggregate sum was far greater than the value of all his property, personal and real.

That on the 17th day of March, 1879, said Knight, who was utterly and grossly insolvent, though in good business credit with complainants and other merchants in distant cities, secretly gave a power or warrant of attorney authorizing one Alexander C. Ayres, or any attorney-at-law in the State of Indiana, to appear for him in said superior court of Marion county, Indiana, at any regular term thereof, and to waive the issuing and service of process, and receive a declaration or complaint in favor of the defendants, Eliza J. Knight and Fletcher & Churchman, and confess said action for such sums as should appear to said attorney to be due on two notes signed by said John Knight, attached to said warrant, one being dated December 23, 1878, for $10,000.00, at 60 days, in favor of said Eliza J. Knight, with 10 per cent. interest after maturity and 10 per cent. attorneys' fees, and the other being dated March 1, 1879, for $10,000.00 at one day after date, in favor of said Fletcher & Churchman, with 10 per cent. interest until paid and attorneys' fees, and to permit judgment to be then and there entered up for such sums and costs, and thereupon to release all error and waive all right and benefit of appeal.

That the affidavit of said Knight, accompanying and attached to said warrant, averring that the same was not confessed for the purpose of defrauding the creditors of said Knight, was certified to by one Edgar A. Brown as notary public, who was at that time and at the time said judgment was confessed by said Ayres, as afterwards stated in the bill, a partner of said Ayres in the practice of the law and interested in the fee which said Ayres was to be paid for acting under said warrant.

That at the time of giving said notes and of giving said warrant said John Knight had not $20,000 of personal property, nor could he hope to have such a quantity save by large purchases from others,

and that all his real estate was mortgaged or otherwise incumbered far beyond its value.

That said John Knight, with the knowledge and consent of said Eliza J. Knight and Fletcher and Churchman, without any publication or notice to his former customers, including the complainants, of the execution of said warrant of attorney, continued after
201 said 17th day of March, 1879, in business as before, buying and selling goods and applying the proceeds to the use of said Eliza J. Knight and Fletcher & Churchman, said purchases being on credit and in larger quantities than usual.

That on the 1st day of May, 1879, said Alexander C. Ayres appeared in said superior court and, without receiving any declaration or complaint from or in favor of said Eliza J. Knight and Fletcher & Churchman, or either of them, and without any action having been brought by them, confessed a judgment in favor of them jointly, but not severally, for the sum of $20,352.22, alleging the above-described warrant of attorney as his only authority; that on the same day said Eliza J. Knight and Fletcher & Churchman procured an execution issued upon said judgment to be levied upon all the personal property, goods, and stock in trade of said John Knight of the aggregate value of $15,000, including, as they well knew, goods sold in April by said Spang, Chalfant & Co., and part of those sold by said P. Jewell & Sons, and have through said John Knight sold and disposed of all of them to the amount of $15,000, and have applied the proceeds thereof to their own use, well knowing at the time that the goods had not been paid for.

That said notes, warrant of attorney, affidavit, judgment, and execution, and each of them, were without consideration, unauthorized, fraudulent, and void as to complainants, and were each and all given and taken without the knowledge and against the interests and wishes of complainants.

And said complainants prayed in said bill that said notes, warrant of attorney, judgment, and execution and the actions of the defendants to said bill thereunder be declared fraudulent and void as to complainants, and that the defendants and each of them be declared trustees for the complainants and be required to account for said goods and merchandise and to pay the same into this court.

That the defendant, John Knight, appeared to said bill and put in his answer thereto, wherein he admitted that he had become indebted to the complainants, severally, at the times and to the amounts stated in the bill, and that judgments therefor had been recovered against him and executions for the collections thereof issued and returned at the times and in the manner stated in said bill, and that said indebtedness was still unpaid. He further admitted that on the 24th day of Januaay, 1879, suits had been commenced against him in the superior court of Marion county, Indiana, to foreclose certain mortgages which covered all his real estate, and that on or about the 19th day of May, 1879, decrees had been rendered foreclosing said mortgages and ordering the sale of the mortgaged real estate for the payment of the aggregate sum of $45,867.85, and that

for $28,770.90 of said sum personal judgments were rendered against him.

He further admitted that on the 17th day of March, 1879, he executed a warrant of attorney authorizing Alexandar C. Ayres to appear in the superior court of Marion county, Indiana, and confess judgment in favor of the defendant, Eliza J. Knight, for such sum as should be due to her upon a certain promissory note held by her against him for the sum of $10,000, dated December 23, 1878, and in favor of Fletcher & Churchman for such sum as should be due upon a certain promissory note held by them against him for $10,000, dated March 1, 1879, and that the affidavit by him made to said warrant of attorney was sworn to before Edgar A. Brown, as notary public, who was at the time a partner of said Ayres, and, as he believed, interested in any fee which might be paid to said Ayres for his services in said matter.

202 He also admitted that he did not have at the time of giving said notes and warrant of attorney personal property to the amount of $20,000.

He also admitted that after giving said warrant of attorney as aforesaid he continued in business as before, buying and selling goods in the usual and ordinary course, and that he did not give notice to his former customers, including plaintiffs, of the execution of said warrant of attorney.

He also admitted that on the 1st day of May, 1879, said Ayres appeared in said superior court and confessed a judgment against him in favor, jointly, of said Eliza J. Knight and Fletcher & Churchman for the sum of $20,352.22, but as to whether any complaints were filed or actions commenced before such confession was made he averred that he had no information, except the statements contained in said bill exhibited against him, but that he believed said statements to be true.

He further admitted that an execution was issued on said judgment on the 1st day of May, 1879, which became a lien from that date upon all his personal property, goods, and stock in trade, the aggregate value of which was about $15,000, but whether any of the goods purchased from the complainants after said warrant of attorney was given were then in his possession or became subject to said lien he averred that he did not know.

He admitted that he made no defence to the foreclosure of said mortgages upon his said real estate, but averred that he had no defence, either legal or equitable, to make thereto, and while it was true, as stated in the bill, that the aggregate sum of $45,867.85, for which said mortgage was foreclosed, exceeded the value of said real estate, yet he averred that only $28,770.90 of said sum was his debt, and that his real estate, which alone was mortgaged for the payment thereof, was amply sufficient for such payment and in fact did, upon the sale of said real estate under said foreclosure decrees, sell for enough to pay all of his said personal indebtedness and thereby he was fully discharged therefrom, and he denied the allegation of said bill that his real and personal estate were insufficient to pay all of said mortgage debt for which he was personally liable, and averred

the fact to be that his property, real and personal, was largely in excess of his personal indebtedness on account of said mortgages.

He admitted that as matters turned out he was insolvent at the time said warrant of attorney was given, but denied that he then thought or believed that he was insolvent or that he continued in business after said warrant of attorney was given with any hope, expectation, or intention of adding to his personal property to be reached or affected in any way by said warrant of attorney or any action to be taken thereunder by goods purchased on credit from complainants or any one else or of applying the proceeds of any goods thereafter purchased on credit and not paid for to the payment of said indebtedness to Eliza J. Knight and Fletcher and Churchman, and averred the fact to be that at the time said warrant of attorney was given he fully believed that his said mortgaged real estate would sell for enough to pay all of the mortgaged debt for which he was personally liable, as in fact it afterwards did, thereby relieving him from the heavy drain he had been subjected to in paying interest on all of said mortgaged debt and taxes and repairs upon said real estate and leaving him with no indebtedness to carry save that to said Eliza J. Knight and Fletcher and Churchman and his ordinary and current merchandise indebtedness; that he had managed to get through the hard times, so far as his business was concerned,
and had kept up his business and maintained his credit, and
203 that his business was improving with the return of good
times, and his stock on hand and the goods he was buying in the regular course of business were increasing in value, so that he then believed in good faith that if allowed to continue in business he would be able to pay all his debts and liabilities in full.

He denied that said warrant of attorney was secretly given or that during the time he continued in business after the same was given he applied the proceeds of any goods purchased by him after the same was given to the payment of any part of his indebtedness to said Eliza J. Knight or Fletcher and Churchman, or that there was no consideration for the notes held by said Eliza J. Knight and Fletcher and Churchman, or for said warrant of attorney or the judgment confessed thereunder, or that he had any fraudulent intent whatever in executing said notes or warrant of attorney, or in permitting said judgment to be taken against him, or in continuing in business or purchasing goods after said warrant of attorney was given, to cheat, hinder, or delay complainants, or any of his creditors, but averred that long before said warrant of attorney was given, to wit, on the 23d day of December, 1878, he borrowed from said Eliza J. Knight the sum of $10,000.00 of her own separate estate, and which sum she had shortly before that time, at his instance and request, raised for the purpose of loaning to him upon mortgage of her separate real estate, and that upon receiving the same he executed to her on said 23d day of December, 1878, his promissory note, which he *bona fide* owed to her in full at the time said warrant of attorney was executed and which was then due, and for which she held no security save his personal liability; that at the time said warrant of attorney was executed he was also *bona fide* indebted to said

Fletcher and Churchman for moneys by them loaned to him in the sum of $10,000.00, for which they held his several promissory notes, to wit, one dated February 8, 1879, for $1,000.00; one dated December 21, 1878, for $2,000.00; one dated January 2, 1879, for $4,000.00; one dated February 1, 1879, for $1,500.00, and one dated —— —, 1879, for $500.00, and also one for the aggregate of said other notes, $10,000.00, dated March 1, 1879, payable at one day, and which last-described note was given to said Fletcher and Churchman as collateral security for said other notes held by them and made payable at one day, to enable them to bring suit thereon at any time, they having become uneasy on account of having no security for the sum owing to them, and said actions having been commenced against him, said John Knight, to foreclose said mortgage upon his real estate.

He further averred that thereafter, on the 17th day of March, 1879, said Fletcher and Churchman requested him to give them a warrant of attorney for the confession of a judgment on their said indebtedness, so that they could take judgment at any time and before any other creditor could obtain priority; that he justly owed them the sum evidenced by the note held by them and desired to secure them in the payment thereof as far as he could, and was willing to give them said warrant of attorney, but was unwilling, as was also his wife, said Eliza J. Knight, that they should obtain any preference over her, and therefore insisted that said warrant of attorney should provide for the confession of a judgment to her at the same time for the amount of his said indebtedness to her, and thereupon the said warrant of attorney was executed in the form stated in the bill of complaint: and while he admitted that he did not give general notice that he had executed the same, he denied
that there was any circumstances or acts of concealment at-
204 tending the execution of the same, and averred that the same
was executed in all respects as such instruments usually are.

He further averred that he hoped and believed that said Eliza J. Knight and Fletcher & Churchman would not find it necessary to enter judgments against him under said warrant of attorney, and that upon his mortgage indebtedness being paid by the sale of the mortgaged premises he would be permitted to go on with his business, which was then prosperous, and be able to pay in full his indebtedness; and that in this hope and expectation he did continue his business in the usual and ordinary way until the 1st day of May, 1879, buying goods on credit to some extent, but not in larger quantities, as alleged in the bill, but in smaller quantities than he had so purchased in corresponding periods of former years. He further averred that all the proceeds of goods sold by him during said time, except such as were necessarily expended in the prudent and economical management of the business and support of his family, were expended in payment of his mercantile indebtedness, and that the amount of goods sold during said time largely exceeded the amount of his purchases.

He averred that he had nothing to do with the manner in which the judgment was taken against him upon the warrant of attorney,

but after the same had been taken and execution thereon issued, but before the same had been levied upon any of his property, he became satisfied that he could not go on in business any longer, and in consideration of his *bona fide* indebtedness aforesaid to said Eliza J. Knight and Fletcher & Churchman, and for the purpose of paying and discharging the same, and without any fraudulent intent to cheat, hinder, or delay any of his creditors, he did, on the 3rd day of May, 1879, sell and transfer outright to said Eliza J. Knight and Fletcher & Churchman his entire stock in trade of goods, wares, and merchandise, and which at the time was estimated to be and was of the value of $15,000.00, and said Eliza J. Knight and Fletcher & Churchman immediately took exclusive possession of all said property, as the absolute owners thereof, and thereafter, until the 12th day of August, 1879, carried on in their own names jointly the said business, having employed him, said John Knight, as their agent to manage said business, and on said 12th day of August, 1879, they finally wound up and disposed of said business by taking an invoice of the goods on hand and credits, which amounted to $9,449.88, and dividing the same equally, said Eliza J. Knight receiving and appropriating to her own use one-half and said Fletcher & Churchman the other half. They, about the same time, divided between them in the same manner the net amount realized from sales to that date, which was the sum of $5,156.52.

That your petitioners, Francis M. Churchman and Stoughton A. Fletcher, of whom said Churchman is the surviving partner, also appeared to the said bill and put in their answer thereto, wherein they stated that it was true that said John Knight had been for several years a merchant trading and doing business in the city of Indianapolis, in the purchase and sale of machinery and machine supplies, and that, so far as they were informed and believed, he was in good credit with his bankers and the public generally. They averred that they had been engaged for many years in the banking business, in said city of Indianapolis, under the firm name of S. A. Fletcher & Co., and at divers times had loaned said Knight large sums of money on his personal credit without security; that said Knight had from time to time made payments on said loans, and had frequently increased the loans by borrowing more, which sums were increased or diminished as his business required.

They averred that they had no knowledge or information as to said Knight's credit with complainants, or of his dealings with them, or that there were such persons as complainants, until the filing of the bill of complaint, and that they could not admit or deny the allegations of the bill as to Knight's indebtedness to complainants, as they had no information on the subject. They averred that they did not know anything about the alleged draft in favor of the firm of P. Jewell & Sons, nor did they know that said firm had obtained judgment against said John Knight, and the issuing of an execution and the return of *nulla bona* on said several executions, but they averred that if any such judgments and proceedings were had they were matters of record and could be easily established. They averred that they were

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informed and believed that a suit was instituted in the Marion superior court against said John Knight and others to foreclose a mortgage upon certain real estate in said city of Indianapolis for a debt against said John Knight of about $28,000.00, and, if they were not mistaken, they were parties to said suit, but whether said Knight defended said suit they did not then remember, nor did they know of his having any defense thereto; that there was a decree of foreclosure and the mortgaged property ordered sold to pay said mortgaged debt, and that there was also a personal judgment against said Knight for the amount of said mortgaged debt, for about $28,000.00, some time in May, 1879, and said mortgaged property was sold under said decree of foreclosure for enough to satisfy such mortgaged debt. They further averred that it was true that said John Knight was and had been indebted to them for borrowed money, on the 1st of March, 1879, in the following sums, to wit, one note for $1,000.00 dated February 8, 1879, payable in 60 days; one note dated February 15, 1879, for $1,000.00, payable at 60 days; one note for $2,000, dated December 21, 1879, payable at 90 days; one note for $4,000, dated Jan. 2, 1879, payable at 60 days; one note for $1,500, dated February 1st, 1879, payable at 60 days and one made for $500, dated —— — 1879, at — days; that they had no security for said sums except the personal responsibility of said Knight; that on the 1st day of March, 1879, they became uneasy about said indebtedness and wanted security; that said Knight executed to them his note for $10,000, payable one day after date, and delivered it to them as collateral security for said indebtedness, upon which they could sue if they became uneasy; that on the 17th day of March, 1879, they urged him to give them a cognovit upon said $10,000 note, and he refused to do so unless it also included a note for $10,000 he owed his wife for borrowed money, which note was dated the 23d day of December, 1878; that said note was included in the cognovit; that said cognovit or power of attorney to confess judgment was given to Alexander C. Ayres, or any other attorney-at-law of said State, which they were informed was the usual and customary way of giving cognovits or powers of attorney to confess judgments; that Edgar A. Brown, the notary public who took the acknowledgment of said power of attorney, was at the time a partner of said Ayres and interested in the fee, as they were informed and believed. They further averred that they did not give notice that they had said power of attorney, nor did they undertake or attempt to keep it secret; that on the 1st day of May, 1879, they became uneasy about the debt, and, to secure the same if they could, they caused a judgment to be entered on said cognovit for the amount of their said note and the note of said Knight's wife; that they caused execution to issue on said judgment, directed to the sheriff of Marion county, Indiana, but the same was not levied.

They further averred that said John Knight, when he gave
206 said note to them for $10,000, was *bona fide* indebted to them in that sum; that said note to his said wife for $10,000 they were informed and believed, when said note was included in said cognovit, was given for borrowed money from his said wife, who

had some time previous to that time been the owner of a house and lot in the city of Indianapolis, of the value of $20,000 or about that sum, and had mortgaged it, at the request of her husband, for $10,000, and loaned him the money on said 23d day of December, 1878, and this note was given her for that loan; that they then and now believe said statements were true, and the note upon which the judgment in favor of said Knight's wife was rendered was a *bona fide* indebtedness; they denied that the notes held by them and said Eliza J. Knight on said John Knight were given without any consideration, but averred that they were given for borrowed money, and that they took the steps they did for the purpose of securing said indebtedness.

They further averred that on or about the 3d day of May, 1879, they and the said Eliza J. Knight purchased said John Knight's store or stock in trade at cost; that said stock amounted to about $15,000; that they proceeded to sell said stock and run the store until the 12th of August, 1879, when they had sold and realized on said sales the sum of $5,156.52, which they and the said Eliza J. Knight divided evenly between themselves and credited the same on said John Knight's indebtedness to them, respectively; that on the 12th of August, 1879, they and the said Eliza J. Knight divided the balance of said stock equally between them; that the invoice price of the balance of said stock of goods was $9,449.88, and they credited said John Knight upon his said indebtedness to them with one-half of said invoice price of said goods, to wit, $4,724.94, and said Eliza J. Knight credited him upon his indebtedness to her with a like amount; that on said 12th of August, 1879, they and said John Knight made a settlement, and after crediting him with the full proceeds of one-half of said stock of goods so sold to them and Eliza J. Knight, on the 3d of May, 1876, to wit, with the said sum of $2,578.26, and said sum of $4,724.94, said John Knight was indebted still in the sum of $2,885, and he executed to them his note for that amount, which they then held and which was wholly unpaid; that they surrendered to him his several notes so held by them, respectively.

They further averred that they, with said Eliza J. Knight, made said purchase of said John Knight of said stock of goods in good faith, solely with a view and intent to secure a *bona fide* indebtedness from said John Knight to them; they denied that said sale was made with the fraudulent intent to cheat, hinder or delay the creditors of said John Knight; that he was justly indebted to them and paid them as he had a right to do.

They further averred that they had no knowledge, information, or belief that said John Knight, after he made said cognovit, continued to purchase goods on credit in larger quantities than usual before that time, but averred on the contrary that they were informed he did not purchase in as large quantities as before, but he continued to run his store as closely and economically as he could, and paid out after said cognovit was executed upon his indebtedness as much as he collected, except in the sum of $3.64.

They further averred that they were informed and believed that

said John Knight, up to and until the 1st of May, 1879, thought and believed that he would be able to pay all his debts and carry on his business as he had heretofore done; they denied that said Knight paid them any money or other thing after the 17th of March, 1879, till after the 1st of May, 1879, and after that time only said goods and amounts hereinbefore set out; they denied
207 that the execution issued upon said judgment was levied upon said stock of goods of John Knight, and averred that if said stock when they and said Eliza J. Knight purchased it included any goods sold by complainants to said John Knight they were wholly ignorant of said fact and had no knowledge that said goods had not been paid for. They denied that said notes held by them were without consideration, unauthorized, fraudulent, or void as to complainants or any other person; that it is true that they have bank-books showing their transactions with said John Knight, and they filed a transcript of the same with their answer. They denied that said John Knight purchased goods on a credit with a view and intent to increase his stock and apply the proceeds in payment of their debt and the debt of Eliza J. Knight, but averred that they were informed and believed that after the 17th of March, 1879, he sold more goods than he purchased and his stock was not as large on the 3d of May, 1879, as on the 17th of March, 1879.

That the defendant, Eliza J. Knight, appeared to said bill and put in her answer thereto, wherein she admitted that her codefendant, John Knight, on the 27th of December, 1878, and on the 1st of May, 1879, and continuously between said dates and for a long time prior thereto, was and had been in business in his own name in buying and selling machinery and machine supplies, but as to whether his credit among plaintiffs and other merchants was good, or whether he was in the habit of buying goods on credit from plaintiffs or others, she did not know, but believed the facts were as stated in the bill of complaint, inasmuch as it is a usual and customary way of doing business. She had no information as to the averments of said bill as to goods purchased by her codefendant, John Knight, from the plaintiffs or as to what evidences of indebtedness said defendant executed to said plaintiffs, or as to the non-payment of said alleged indebtedness, or as to the alleged recovery by said plaintiffs of judgments against said defendant, or as to the issue or return of executions thereon, but such facts, if they exist, were easily susceptible of proof, and she asked that plaintiffs be required to prove the same. She admitted that suits were commenced in the superior court of Marion county, Indiana, on the 24th of January, 1879, to foreclose certain mortgages which covered all the real estate of the defendant, John Knight, and that on the 17th of May, 1879, judgments were recovered in said suits for the foreclosure of said mortgages and sale of the mortgaged premises for the payment of the mortgage debt, which was assessed at the aggregate sum of $45,867.85, but she averred that said John Knight was only personally liable for $28,770.90 of said sum, and that the personal judgment against him was limited to this amount, and while it was true that said aggregate mortgage debt was greater

in value than all said mortgaged real estate, yet all of said real estate was not mortgaged for said debt, and the real estate which was mortgaged for the payment of the aforesaid personal indebtedness of said John Knight was of more than sufficient value to pay all said personal indebtedness at the sale thereof made under said decree of foreclosure. She admitted that on the 17th day of March, 1879, said John Knight executed a warrant or power of attorney authorizing one Alexander C. Ayres, or any other attorney-at-law of the State of Indiana, to appear in the superior court of Marion county, Indiana, and receive a complaint or declaration in favor of herself and her codefendants, Fletcher and Churchman, and to confess judgment in favor of herself against the defendant, John Knight, for such sum as should be due upon a promissory note held by her against
208 said John Knight for $10,000, dated December 23, 1878, and in favor of said Fletcher and Churchman for such sum as should be due upon a promissory note held by them against said John Knight for $10,000, dated March 1, 1879; that the affidavit thereto of said John Knight was sworn to before one Edgar A. Brown, as notary public, who at the time was a partner of said Ayres and, as she believed, interested in any fee said Ayres should receive for his services in said matter; that on the first day of May, 1879, a judgment was confessed in the superior court of Marion county, Indiana, by said Ayres under said warrant of attorney against said John Knight in favor of herself and said Fletcher and Churchman jointly for $20,352.22; that an execution was on the same day issued on said judgment which became a lien on all the stock in trade of goods, wares, and merchandise belonging to said John Knight, but she denied that said warrant of attorney was secretly given, and averred that, as she was informed and believed, there was nothing unusual in the execution of said instrument. She admitted that she did not go about giving notice that said warrant of attorney had been executed, but submitted that she was under no obligation whatever to do so, and she averred that, on the other hand, she herself did nothing whatever looking to the concealment of the execution of said warrant of attorney, and she had, as she averred, no knowledge or belief that either or any of her codefendants were in any way concealing the fact of the execution of said warrant of attorney.

She further averred that, as events subsequently turned out, said John Knight was insolvent when said warrant of attorney was executed and said judgment confessed, but she averred that she was informed and believed that, at the time said warrant of attorney was given and down to the time when said judgment was taken, he thought that he would be able to go on with his business in the usual way and meet and discharge all his liabilities in full. She further averred that she did not know how much personal property said John Knight held at the time he executed to her and said Fletcher and Churchman said notes and said warrant of attorney, and that if the amount of said property was a material matter in said cause she asked that said plaintiffs be required to make proof

of their allegations in reference to the same. She admitted that said John Knight continued in business after the execution of said warrant of attorney and that she knew of it at the time, but, while she admitted that she made no objection, she denied that she ever consented thereto or was in any way consulted about or had any connection with it, nor had she had any knowledge or belief that her codefendants, Fletcher and Churchman, ever consented to or were consulted about or connected therewith. She further averred that she had no knowledge as to whether said John Knight made publication or gave notice to the plaintiffs or others of the execution of said warrant of attorney, and had at that time no knowledge that said John Knight was buying goods from plaintiffs or others on credit, and while she had since been informed and therefore admitted the fact to be true that he did while so carrying on business buy some goods on credit, yet she averred that such purchases, instead of being in larger quantities than usual, were in smaller quantities than he had bought in corresponding periods of former years, and that, instead of the proceeds of any goods purchased during said time, whether for cash or on credit, being applied to the payment of the indebtedness aforesaid to herself and said Fletcher and Churchman, she averred that nothing whatever was paid to her, and she believed that nothing was paid to said Fletcher and Churchman. She further averred that said John Knight's sales during said time largely exceeded his purchases, so that his stock
209 of goods on hand when judgment was so confessed under said warrant of attorney was smaller than when said warrant of attorney was executed, and that his indebtedness other than that for which said warrant of attorney was given had been decreased, because she averred that said Knight applied to the payment of such indebtedness all the proceeds of his business during said time, except such as was necessarily consumed in the economical support of his family and by the running expenses of his business.

She denied that the note held by her against said John Knight was without consideration, or that, to her knowledge, information, or belief, the note held by said Fletcher and Churchman was without consideration, or that said warrant of attorney or the judgment confessed thereunder was without consideration, or that she or any of her codefendants, to her knowledge or belief, had any fraudulent intention in or by the execution of said notes and warrant of attorney or in or by the taking of said judgment to cheat, hinder, or delay plaintiffs or any of the creditors of said John Knight; and she averred that at the date of the execution of the note so held by her against said John Knight, to wit, the 23d day of December, 1878, she loaned to him the sum of ten thousand dollars of her own separate estate, and which she had shortly before that time and at his request, for the purpose of so loaning the same to him, borrowed upon mortgage of her separate real estate, and for the repayment of the same said John Knight executed to her his promissory note described in said warrant of attorney, which remained wholly unpaid at the time said warrant of attorney was executed and for which she had no security except the personal liability of said John

Knight; that she was informed and believed that said John Knight was also *bona fide* indebted to said Fletcher and Churchman in the sum of ten thousand dollars when said warrant of attorney was executed for moneys to that amount before that time loaned by them to said John Knight and for which they at that time held his promissory note for $10,000, dated March 1, 1879, which he had given to them at that time as collateral security for other notes by them held against him and which he had executed to them from time to time in the course of his dealings with them for money borrowed from them, said notes being of the dates and amounts following, to wit: One dated February 8, 1879, for $1,000; one dated February 15, 1879, for $1,000; one dated December 21, 1878, for $2,000; one dated January 2, 1879, for $4,000; one dated February 1, 1879, for $1,500, and one dated —— —, 1879, for $500; that on the said 1st day of March, 1879, said Fletcher and Churchman became uneasy on account of said suit being pending against said John Knight for the foreclosure of said mortgages, and, having no security for said debt owing to them, they demanded of said John Knight that he should execute to them said note for $10,000 and make the same payable at one day, so that if it became necessary for their protection and security they could sue at once, and said Knight thereupon gave to them said note; that all of the indebtedness for which the same was given was, as she was informed and believed, justly owing to said Fletcher and Churchman by said Knight; that on the 17th day of March, 1879, said Fletcher and Churchman requested said John Knight to give them a warrant of attorney to confess judgment in their favor for the amount due them, so that they could take judgment at any time and secure priority in the payment of their said debt; that she and the defendant, John Knight, were not willing that said warrant of attorney should be given unless it pro-
210 vided for the confession of a judgment at the same time to her for the amount owing to her as aforesaid, so that said Fletcher and Churchman should acquire no priority; that said Fletcher and Churchman thereupon agreed that said warrant of attorney should be executed, and it was accordingly done.

She further averred that her said debt was then and for a long time had been due, and that said John Knight had no defence whatever thereto, and could not have prevented her from recovering a judgment thereon; that in taking said warrant of attorney and in procuring judgment to be entered thereon she was, as she was advised, only exercising proper and rightful diligence to secure the payment of the moneys due to her from said John Knight.

She further averred that she entrusted to said Ayres to have judgment entered on said warrant of attorney, and had no actual knowledge until long after as to the proceedings attending the taking of said judgment or as to the form in which the same was taken; that after said judgment had been taken, on the 1st day of May, 1879, and execution issued, but before any levy had been made, she and her codefendants, Fletcher & Churchman, did, on the 3d of May, 1879, jointly purchase from said John Knight his entire stock in trade of goods, wares, and merchandise in the bill of complaint men-

tioned, which was of the value of $15,000, and paid to said Knight the full value price thereof in the discharge and satisfaction of his aforesaid indebtedness to them, and said John Knight then delivered to them, and they jointly took, and continuously thereafter until the 12th day of August, 1879, remained in the exclusive possession and control of, said property as the absolute owners thereof, and managed and carried on the said business, employing the said John Knight as their agent, and on the said 12th day of August, 1879, she and said Fletcher & Churchman finally closed up said business by dividing equally between themselves the net proceeds of all sales to that date, which amounted to $5,156.52, and all goods on hand, which amounted to $9,449.88, and that she had long since sold and disposed of all said goods which were taken for her share, and applied the proceeds thereof as well as her share of said $5,156.52 to the payment of said John Knight's indebtedness to her aforesaid, and she averred that, except her share of said property so as aforesaid taken from said John Knight for her said debt, she had received no payment or satisfaction thereof; that she had never received or converted to her own use any of the stock of merchandise of said John Knight, as in the bill of complaint charged, except as thereinafter stated, and she denied that either she or any of her co-defendants, so far as she knew, had any fraudulent intent in taking said judgment or in purchasing said property from said John Knight to cheat, hinder, or delay plaintiffs or any of his creditors, and she averred that she only intended by said transactions to procure payment, so far as she could, of the debt honestly due to her from said John Knight.

She further averred that if any goods purchased on credit from the plaintiffs after said warrant of attorney was executed and not paid for passed to her under said purchase she had no knowledge of it.

That said answer of the said Knight was duly verified by him, and the answer of the said Fletcher & Churchman was duly verified by said Francis M. Churchman, as one of the respondents therein, and the answer of the said Eliza J. Knight was duly verified by her.

That each of the said several answers having been replied to, said cause was referred to William P. Fishback, Esq., as master, to take the evidence and report the same with his conclusions.

211 That, having taken the evidence, said master, on the 22d day of February, 1882, filed his report of the same and his conclusions thereon, accompanied by the evidence heard by him; that in said report said master found that said stock of goods, wares, and merchandise of said John Knight had been sold outright to said Eliza J. Knight and Fletcher & Churchman at the time, and in the manner, and for the consideration stated in the several answers of the defendants to said bill; that the evidence did not establish any fraudulent intent, and that such sale was valid. A copy of said report and accompanying evidence is filed herewith, marked "Exhibit A," and is prayed to be taken and considered a part of this petition.

That after the filing of said master's report, to wit, on the 8th day of March, 1882, the said complainants filed their exceptions to said master's report, which were and are as follows:

First exception. For that the said master has not reported the fatal variance between defendants' several allegations in their answers, as to the nature of the consideration for the alleged sale of goods on May 3, 1879, and the basis thereof, and their allegations as developed in the evidence, and complainants say that said report should show that defendants' answers all allege that the sale was made for the invoice value of the goods, whereas the evidence is that said goods were not invoiced, were transferred without reference to any invoice; that the only approach to an invoice was Knight's guess as to their value, and that they were not taken at that guess, but in satisfaction of the judgment of May 1, 1879.

Second exception. For that the said master has not reported that the collateral note given March 2, 1879, was for the same sum as the face of the original notes, and that said original notes matured later than March 2, 1879, and that therefore the collateral note and judgment subsequently rendered thereon were not for the same sum as the original notes.

Third exception. For that the said master has not reported that the original notes were not surrendered up at the date of the alleged sale of goods, May 3, 1879, nor until long after, to wit, August 12, 1879, when defendants had a settlement among themselves.

Fourth exception. For that the said master has not reported that said alleged sale of May 3, 1879, was in consideration of and to satisfy the preceding judgment of May 1, 1879, which judgment he has rightly found was in fraud of these complainants.

Fifth exception. For that the said master has not reported that the lien of the execution, which he has rightly found was fraudulent, was still held upon the goods at the time of said alleged sale.

Sixth exception. For that the said master has reported that it was "admitted that any other creditor could have bought Knight's goods and taken them in satisfaction of debts on May 3rd," whereas one of the very points most strongly urged by complainants, both at the hearing and in their brief, was that by taking judgment and issuing execution Knight's goods were covered up from his creditors, so they could not have levied on them nor bought them of Knight, except under the cloud of the execution, and that until defendants released the lien of their fraudulent execution and satisfied their fraudulent judgment they continued engaged in their
212 fraudulent transactions, continued to be tort-feasors as to all other creditors, and could acquire no rights as against them.

Seventh exception. For that the said master has not reported that $— worth of goods were sold by Pliny Jewell & Sons, April —, 1879, to said John Knight, while said cognovit was being held, so that Knight could go on in business.

Eighth exception. For that said master has not reported that on April —, 1879, said Knight gave P. Jewell & Sons his acceptance, payable June —, 1879, for the bill of goods obtained in February, 1879, and thereby obtained an extension of credit, prevented them

from suing until after the pretended sale, and thereby damaged plaintiffs as deeply and in effect the same as if the goods had been sold at the time.

Ninth exception. For that the said master has not found that as Fletcher & Churchman and Mrs. Knight held the cognovit at Knight's request, so that he could go in business—they knowing the facts which made every purchase by him on credit a fraud—they thereby became privies or co-conspirators with him in the fraud, and, as in the case where a deed is withheld from record to enable the grantor still to have credit, they were estopped from setting up any claim against such grantor until the creditor defrauded is satisfied as to his debt, which only could have been and was intended to be incurred because of such their act.

Tenth exception. For that while the said master has found that the cognovit, judgment, and execution were fraudulent, he has not also found that the sale made to satisfy such judgment was also fraudulent.

Eleventh exception. For that the said master has not found that so long as the lien of the fraudulent execution was upon the goods, thereby covering them up from other creditors, the defendants continued to be tort-feasors as to all other creditors, and could not acquire any rights as against them.

Twelfth exception. For that the said master has found that upon all the evidence the complainants' bill lacks equity, whereas he should have found that the bill was sustained by the proof, and that the complainants were entitled to a decree in accordance with the prayer of their bill.

That thereafter, at divers times, intervening petitions of divers creditors of said John Knight by leave of court were filed, setting up claims due such creditors from said Knight.

That afterwards, on the 16th day of August, 1882, the exceptions of the complainants to said master's report were sustained, and the court found as follows:

That said exceptions are well taken and are sustained, and that the equity of said cause is with the complainants, and that there is due the complainants, Pliny Jewell and his partners named in the bill, the sum of four hundred and forty dollars and twenty cents, with interest thereon from the 23d day of March, 1881, and to Charles H. Spang and his partners named in the bill the sum of one thousand and thirty-two dollars, with interest thereon from May 3, 1881.

That the complainants are entitled to a decree for the amounts so found due them, respectively, and to a priority of payment; that the sale by the respondent, John Knight, to his co-respondents was fraudulent and void, and that the goods so transferred exceeded in value the aggregate amount of the debts herein found to be due the complainants.

213 And it is ordered by the court that the remaining matters in issue herein between the intervening petitioners who have been made parties plaintiff be referred to the master, who will take testimony and report to the court with all convenient speed the

amout due each said intervening petitioner—now complainant—and other creditors who may file their claims herein and become parties hereto within thirty days from this date.

And it is now agreed between the respondents and all creditors who have been allowed to intervene herein, and is so found by the court for the purpose of distribution, that the cash value of the goods transferred by John Knight to his co-respondents was the sum of $14,606.40, and that the amount due from said John Knight to Fletcher and Churchman, on May 3, 1879, was $10,166.66, and from said John to said Eliza was $10,361.00.

But the above reference to the master and the proceedings thereunder are not to affect or prejudice the rights of the complainants to the original bill herein, the bill remaining as to them a bill on behalf of themselves only.

That under said reference said master took the testimony therein referred to, and on the 10th day of November, 1882, filed his report of the same, showing the various sums due the several intervening petitioners, none of which several sums due to any of said petitioners as individuals or as partners was $5,000, and that the total amount of debts found to be due from said Knight to said complainants and said intervening petitioners was $—.

And your petitioners pray that the court will refer to said report and accompanying evidence, and that the same may be considered the same as if herein fully set out.

That after the filing of said last-named master's report said intervening petitioners filed their exceptions to said report.

That afterwards, on the — day of ——, 1883, and in the November term, 1882, of said court, the court announced its decision in respect of all the matters in issue in said cause, and a draft of the final decree in said cause has been prepared and submitted to counsel, but the same has not been spread of record in the order book of said court. A copy of said draft of final decree is filed herewith, marked "Exhibit B," and is prayed to be taken and considered as a part of this petition.

Assignment of Errors.

That your petitioners find themselves much aggrieved by said finding, decision, and decretal order, and your petitioners submit that so much of the said finding and decree is erroneous as finds that the sale of his stock of goods by the said defendant Knight to the said Fletcher & Churchman and the said Eliza Knight, of May 3d, 1879, was fraudulent and void as against the creditors of said Knight.

And your petitioners further submit that said finding and decree is erroneous, and that they are aggrieved thereby, in this, that the said sale of goods by said Knight to said Fletcher & Churchman and said Eliza J. Knight, if fraudulent at all, was so constructively only, and not actually fraudulent, and therefore said Churchman, as surviving partner, and the said Eliza J. Knight, should have been allowed to retain so much of the proceeds of the sale of said goods as

had been received by them and applied on their said several debts prior to the filing of said bill of complaint—

Whereas by said decree they are required to pay all said proceeds of sale into court for the use and benefit of said other creditors as hereinabove shown.

214 And your petitioners further submit that so much of the said finding and decree is erroneous as finds and orders that said Fletcher & Churchman, or said Churchman, as surviving partner, and said Eliza J. Knight were not and are not entitled, and had and have no right to be allowed to come in and be allowed to participate with said original complainants as creditors.

And your petitioners further submit that so much of the said finding and decree is erroneous as finds that the debt due by said Knight to your petitioners, Francis M. Churchman, as surviving partner, and said Eliza J. Knight, should be and shall be postponed to said intervening plaintiffs whose debts were contracted between the 17th day of March and 3d day of May, 1879, and that said interveners should be paid in full before allowing your petitioners to retain any of said fund on account of the debt of said Knight due to them.

Prayer for Relief.

And your petititioners further show that they cannot have and take an appeal in said cause for the reason that of all of the various amounts due said complainants and said interveners no single debt or claim held by any of said complainants or interveners is of the amount of $5,000 or over, but all of said claims and debts are severally for sums less than $5,000.

Wherefore your petitioners pray that your honors will be pleased to grant a rehearing of this cause before your honors, your petitioners submitting to pay such costs as the court shall award in case their complaint shall be found groundless, and that, pending the hearing of this petition, your honors will stay the execution of said decree in such manner and upon such terms as may appear just.

And your petitioners will ever pray, etc.

FRANCIS M. CHURCHMAN,
Surviving Partner,
ELIZA KNIGHT,
By BAKER, HORD & HENDRICKS,
RAND & WINTERS,
HEROD & WINTER,
Their Solicitors.

We certify that we have examined the case referred to in the foregoing petition, and are of opinion that the decretal order therein mentioned is erroneous in the particulars specified in said petition.

Indianapolis, March 12, 1883.

F. WINTER, *Of Counsel.*

215 And afterwards, to wit, on the 1st day of May, 1883, at the May term of said court, before the Honorable Thomas Drummond, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and move the court to strike out the defendants' petitions for a rehearing in the above-entitled cause.

And afterwards, to wit, on the 11th day of May, 1883, at the May term of said court, before the Honorable John M. Harlan, justice, and Honorable William A. Woods, one of the judges of said Court, the following further proceedings in the above-entitled cause were had, to wit:

Now come the parties, the original complainants, the intervening petitioners, and the defendants, and, pursuant to agreement made in open court, it is ordered that this cause be set down for hearing before his honor Judge Woods at such time as may be fixed by him, and that such hearing by him be of the original cause *de novo* upon the bill, answers, replication, master's reports, and all evidence heard by the master and filed with his reports and of record or on file in this cause, and all agreements and admissions of record in the cause and exceptions filed to the master's reports.

It is further ordered by the court that the time for the pay-
216 ment into court by the defendants of the money ordered to be paid into court by the decree in this cause of March 12th, 1883, be extended until the final decree be rendered: Provided, That the defendants shall execute, within three days from this date, their bond in a penalty in double the amount required to be paid into court by said decree of March 12th, 1883, with sureties to be approved by the clerk of this court, and payable to the complainants and intervening petitioners herein, conditioned that the defendants shall fully pay and perform any final decree that shall be rendered in this cause, according to the terms of said decree; and now come said defendants and file their bond in the penalty and upon the conditions above prescribed, with Stoughton J. Fletcher, surety, which is approved by the clerk of the court, and is as follows, to wit:

Know all men by these presents that the undersigned, Francis M. Churchman, surviving partner of Fletcher and Churchman, John Knight and Eliza J. Knight, defendants in the above-entitled cause, as principals, and Stoughton J. Fletcher, as surety, are held and firmly bound unto the original complainants and all intervening complainants in the above-entitled cause, who are named in the final decree entered in said cause March 12th, 1883, in the penal sum of nineteen thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

217 The condition of the above obligation is as follows:

Whereas by the decree made in the above-entitled cause of the date of March 12th, 1883, the defendants in said cause were required to pay into court within 60 days from said date for the use of the original complainants and intervening complainants in said

cause, whose names are set out in said decree, certain specified sums of money to each of said original and intervening complainants so named; and whereas said defendants thereupon filed in said cause a petition for rehearing, which has now by order of the court been set down for hearing before his honor Judge Woods; and whereas the court pending the hearing of such petition for a rehearing has ordered that the time for paying into court the money required to be paid by said decree shall be extended until a final decree be made upon said petition for a rehearing upon condition that said defendants give bond in a penalty double the amount of the aggregate of the sums of money required to be paid by said decree of March 12th, 1883, conditioned that said defendants will fully pay and perform whatsoever they may be required to pay and perform by the final decree which shall be rendered upon said petition for rehearing:

Now, therefore, if the said defendants, Francis M. Churchman, John Knight, and Eliza J. Knight shall well and truly pay
218 and perform whatsoever they may be required to pay and perform by the final decree which may be rendered in this cause upon the said petition for a rehearing in all respects according to the terms of said final decree, then and in that case this obligation shall be null and void; otherwise to be in full force and effect.

In witness whereof the said Francis M. Churchman, John Knight, and —— —— have hereunto set their hands and seals this 11th day of May, 1883.

FRANCIS M. CHURCHMAN, [SEAL.]
Surviving Partner.
JOHN KNIGHT, [SEAL.]
By HEROD & WINTER, *His Att'ys.*
ELIZA KNIGHT, [SEAL.]
By HEROD & WINTER, *Her Att'ys.*
STOUGHTON J. FLETCHER, [SEAL.]
Security.

Approved this 11th day of May, 1883.

NOBLE C. BUTLER, *Clerk.*

And afterwards, to wit, on the 17th day of September, 1883, at the May term of said court, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their petition for leave to amend their bill of complaint herein in the words following, to wit:

The complainants pray leave to amend their bill of com-
219 plaint herein by inserting therein at the end of the paragraph ending with the word "usual," at p. 5 of printed record (p. 5 of the original written bill), the words following, to wit:

"Said cognovit being held at the request of said John Knight by said other defendants in order that he might continue in business,

buying goods on credit as before, and all said defendants intending that the goods so bought should be covered by the cognovit when confessed, and by a judgment to be taken thereon and by an execution to be issued thereunder."

And also by inserting, at line 28 of printed record, p. 5 (p. 6, line 1, of original written bill), after the words "P. Jewell and Sons," the following words, to wit:

"That said John Knight thereupon sold said personal property, goods, and stock in trade to said other defendants in satisfaction of said cognovit, judgment, and execution, and who."

And also by inserting, at line 35, p. 5, of printed record (line 8, p. 6, of original bill written), after the word "are," the following words, to wit: "By reason of the premises."

That such facts clearly appear by the evidence, and complainants' counsel had supposed they and such inference were sufficiently covered by the allegations of the bill, but to save any question the complainants now ask that the bill may be amended as above.

HORACE SPEED,
Of Counsel for Complainants.

220 And afterwards, to wit, on the 26th day of September, 1883, at the May term of said court, before the Honorable Thomas Drummond and William A. Woods, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be heard upon the petition for a rehearing filed herein before the Honorable William A. Woods, district judge, under the order of court of May 11th, 1883, and the same having been heard and fully considered—

It is ordered that said petition be granted and that this cause be reheard *de novo* upon the bill, answer, replication, evidence, master's reports and exceptions thereto, and that the interlocutory and final decrees entered in this cause on the 9th day of June, 1882, the 16th day of August, 1882, and the 12th day of March, 1883, be, and they are hereby, set aside and vacated, and plaintiffs now amend their bill by leave of court, which amendment is now filed as follows, to wit:

Amendments to the Bill of Complaint Herein upon Leave of Court First Had and Obtained.

1. At the end of the paragraph ending with the word "usual," at page 5 of the printed record (page 5 of the original written bill), insert the words "said cognovit being held at the request of said John Knight by said other defendants in order that he might continue in business, buying goods on credit as before, and all said defendants intending that the goods so bought should be covered by the
220½ cognovit when confessed, and by a judgment to be taken thereon and by an execution to be issued thereunder."

2. At line 28 of printed record, p. 5 (line 1, page 6, of original written bill), after the words "P. Jewell & Sons," insert the words "that

said John Knight thereupon sold said personal property, goods, and stock in trade to said other defendants in satisfaction of said cognovit, judgment, and execution, and who."

3. At line 35, p. 5, of printed record (line 8, p. 6, of original written bill), after the word "are," insert the words "by reason of the premises."

PLINY JEWELL ET AL.,
By HORACE SPEED,
Their Solicitor.

BENJAMIN HARRISON, *Of Counsel.*

221 And the defendant, John Knight, now files his separate, and the defendants, Churchman and Eliza J. Knight, their joint, answer to said amendments as follows, to wit:

And said answer of John Knight is in the words following, to wit:

The defendant, John Knight, severally answering so much or such parts of the amendment filed by the complainants to the original bill of complaint herein as he is advised it is material for him to make answer unto, says:

He denies that the cognovit in said amendment and original bill mentioned was held by his codefendants in order that he might continue in business, buying goods on credit as before, with the intention on either his or their part that such goods should be covered by said cognovit when confessed or any judgment rendered thereon or execution issued thereon, but avers the fact to be that when he requested his codefendants, Fletcher and Churchman, to hold said cognovit he did so, as he stated to them at the time, in the hope and belief that he would be able and with the purpose to induce said Bissell, in the original bill of complaint mentioned, to accept the mortgaged real estate in satisfaction of the mortgage debt, in which event he had no doubt but that he would be able to continue his business and pay all of his debts in full.

He continued business after said cognovit was given, because
222 he believed he could effect said arrangement with Bissell, and that there would be no occasion for said cognovit to be put into judgment and that his business could be continued and all of his debts paid in full. He did not intend to and did not buy any goods on credit with the intention on his part that such goods should be taken under or covered by said cognovit or any judgment or execution thereon, nor has he any knowledge or belief that either or any of his codefendants had any such intention. He was compelled to buy some goods on credit, but such purchases were made as sparingly as possible, and were less in amount than the sales; that the result was that his stock of goods was decreased in value during the time the cognovit was held. No moneys received during the time the cognovit was held were paid to or received by his codefendants, but all of such moneys except what was necessarily used in the support of his family was expended in payment of his mercantile debts and in carrying on the business.

He further denies that he sold his personal property, goods, and stock in trade to his codefendants in satisfaction of said cognovit,

judgment, and execution, but he avers that he sold said property to his said codefendants in satisfaction of the debts which he owed to his codefendants, and which debts were only evidenced by said cognovit, judgment, and execution. The indebtedness which he *bona fide*ly owed to his codefendants was the sole and only consideration for such sale.

223 And he further affirms that all matters and things alleged in his original answer filed herein to the bill of complaint are true, notwithstanding the matters and things in said amendments to said original bill.

F. WINTER,
Solicitor for said Def't.

STATE OF INDIANA, } ss:
Marion County, }

John Knight, the defendant above named, on oath says the facts stated in the foregoing answer are true.

JOHN KNIGHT.

Subscribed and sworn to before me this 17th day of November, 1883.

[SEAL.] WILLIAM A. HUGHES,
Notary Public.

And said joint answer of Churchman and Eliza J. Knight is in the words following, to wit:

The defendants, Francis M. Churchman, surviving partner of Fletcher and Churchman, and Eliza J. Knight, jointly answering so much of the amendments filed by complainants to the original bill of complaint herein as they are advised it is material for them to make answer unto, say:

They deny that the cognovit in said amendments and original bill mentioned was held by them or either of them at the request of said defendant, John Knight, in order that he might continue in business and purchase goods on credit, or that they or either

224 of them or the said John Knight, to their knowledge or belief, had any intention that any goods purchased by said Knight on credit while said cognovit was held should be so purchased in order to be covered by said cognovit when confessed or any judgment or any execution thereon.

They aver the fact to be that when said John Knight requested said Fletcher and Churchman to hold said cognovit he stated, as his only reason for making such request, that he had an appointment to see at an early day George P. Bissell, who had then pending against him the foreclosure suit in the original bill mentioned, and hoped and believed he would be able to induce him to accept the mortgaged property in satisfaction of the mortgage debt, in which case he would be able to continue his business and pay all his debts in full.

These defendants believed said statements of said Knight to be true, and while they did not then or at any time agree to hold said

cognovit, but expressly reserved the right to take judgment at any moment when it became necessary for their protection to do so, they did hold said cognovit to give said Knight an opportunity to make said arrangement with said Bissell.

It is true said John Knight continued business while said cognovit was so held, but these defendants did not hold said cognovit with the intention that he should or to enable him to do so, but only for the purpose of giving him an opportu-
225 nity to see Bissell and with no other motive or intention. They did not, during the time said cognovit was held, have any knowledge that goods were being bought upon credit. They did not intend that said Knight should, and have no knowledge or belief that said Knight intended to, buy any goods on credit to be covered by any judgment rendered or execution issued upon or under said cognovit. In fact, as they afterwards ascertained, the expenditures out of said business were greater than the purchases of goods during the time the cognovit was held; and the goods on hand, when they purchased the same, were $1,000 less in value than when the cognovit was given. No part of said expenditures were received by them, but they were all made in payment of mercantile debts or in defraying the expenses of the business, except a small sum which said John Knight used in the necessary and economical support of himself and family.

They further deny that said John Knight sold his personal property, goods, and stock in trade to them in satisfaction of said cognovit, judgment, and execution, but aver that the sole consideration of such purchase was the satisfaction of the debts which said Knight *bona fide*ly owed to them. The cognovit, judgment, and execution were evidence of such indebtedness, and their discharge and satisfaction formed no part of the consideration for the sale of such property.

226 They further affirm that all the matters and things contained in the answers heretofore filed by them to the original bill of complaint herein are true, notwithstanding the matters and things averred in said amendments to said original bill.

F. WINTER, *For Eliza J. Knight.*
McDONALD, BUTLER & MASON,
Att'ys for Churchman.

STATE OF INDIANA, } *ss:*
Marion County, }

Francis M. Churchman and Eliza J. Knight, the defendants named in the foregoing answer, on oath say the facts stated therein are true.

ELIZA J. KNIGHT.
FRANCIS M. CHURCHMAN.

Subscribed and sworn to before me this 17th day of November, 1883.

Witness my hand and notarial seal.

[SEAL.] WILLIAM A. HUGHES,
Notary Public.

And the plaintiff- now files *his* replication to said answers as follows, to wit:

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said amendments to said answers, for replication thereto say that they will aver and prove the averments in their bill, amendments thereto, and the intervening petitions in this cause to
227 to be true, certain, and sufficient in law to be answered unto, and that the said amendments to said answers of said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as by and in their said bill, the amendments thereto, and the intervening petitions in this cause they have already prayed.

HORACE SPEED,
Sol'r for Complainants and Intervening Petitioners.

And this cause now coming on for hearing upon the bill and amendments thereto, answer, replication, evidence, master's report, and exceptions thereto, the same is submitted to the court.

Here follows the opinion of the court:

The bill in this case, which seeks to have a sale of goods declared fraudulent as against creditors, is not certain and unequivocal in its averments, and, if good, the averments which make it so are not proven. It is alleged that Knight secretly executed a power of attorney for the confession of judgment; that the judgment
228 was confessed and entered, execution issued and levied upon the goods, and that the defendants "have, through said John Knight, sold and disposed of all of them (the goods) to the amount of $15,000, and have applied the proceeds thereof to their own use," knowing at the time that the goods had not been paid for; that the notes upon which the judgment was confessed, warrant of attorney, affidavit, judgment, and execution and each of them were and are without consideration, unauthorized, fraudulent, and void as to the plaintiffs.

It is not alleged that the goods were sold upon or by virtue of the execution, nor to whom they were sold, nor whether the proceeds of the sale, so far as applied to the use of Fletcher and Churchman and Mrs. Knight, were treated as a payment upon the judgment and execution, or were so appropriated for some other reason or pretense. As matter of fact, the proof shows that there was an ample and valuable consideration for the notes upon which judgment was rendered, and that there was no unusual secrecy, on the part of the judgment plaintiffs at least, in reference to the execution of the cognovit. There was no active concealment on their part, and no request or desire revealed by the evidence that the fact should not be made public.

The bill, however, shows that the power of attorney was executed on the 17th day of March, 1879, and that the judgment was
229 not taken until the first day of the ensuing May, and it is claimed in argument that this delay was a fraud upon the plaintiffs, who between those dates gave Knight credit in ignorance of the cognovit. There is, however, no allegation in the bill that the entry of judgment was postponed for the purpose of enabling Knight to obtain undue credit or with any fraudulent intent, and it cannot be that a cognovit becomes void or fraudulent on account of a delay to take judgment unaccompanied by a fraudulent intent.

Indeed, except in Marion and two or three other counties of the State, the intervals between courts in which judgment could not be taken are as long or longer than the delay complained of in this instance; but, to say the least, if the plaintiffs relied on this delay as the basis of their action it should have been so indicated in the complaint; he who would prove fraud must allege the fact in which he claims it to consist, and when the intention with which an act is done is essential to make out the fraud, an allegation of the intention is just as necessary as of the act; this is elementary.

But conceding that, by reason of the subsequent conduct of the defendants, the cognovit, the judgment, and execution became and were fraudulent, the fact seems to me to have become immaterial. The evidence shows that the goods, though levied upon, were not sold by virtue of the execution. The levy was abandoned
230 and the goods—the entire stock—sold by Knight to his codefendants in payment of his debts to them, the genuiness and validity of which are not disputed. This sale the bill does not attack or even show that it was made.

The debts being valid and unpaid, Knight had a clear right to pay them in preference to all others, and the record does not show that more than this was done.

And afterwards, to wit, on the 27th day of February, 1884, at the November term of said court, before the Honorable Thomas Drummond and William A. Woods, judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be finally heard before the Honorable Thomas Drummond, circuit judge, and the Honorable William A. Woods, district judge, sitting herein, and being argued by counsel and considered by the court, and the court being sufficiently advised in the premises, doth find, upon the pleading and the proofs adduced, that the equity of the cause is with the defendants, and that the complainants' bill ought to be dismissed.

And it is thereupon ordered, adjudged, and decreed by the court that the bill of complaint herein be, and the same is hereby, dismissed for want of equity, and that the defendants recover of the complainants their costs and charges herein, taxed at $—.

All of which is finally ordered, adjudged, and decreed.

231 And the opinions of the judges being opposed upon questions which have occurred in the hearing of this cause, they have, on motion of the complainants, by their solicitors, caused the

points upon which they have so disagreed to be stated under their direction and certified, and such certificate is now ordered to be entered of record, and is in the words and figures following, to wit:

The defendant, John Knight, was a merchant engaged in the railway-supply business at Indianapolis. He had been engaged in such business for several years prior to the 3rd day of May, 1879. The defendants, Fletcher and Churchman, were his bankers, and the defendant, Eliza J. Knight, is his wife.

The complainants are Eastern manufacturers or merchants residing at Hartford, Connecticut, and Pittsburgh, and have sold goods to Knight for which they have never been paid.

In the month of December, 1878, Knight borrowed from his wife $10,000, which she raised by mortgaging her separate real estate. He gave her a note at the time of the loan evidencing the indebtedness. There is no evidence impeaching the *bona fides* of this transaction between Knight and his wife. The money so raised was used by Knight in his business.

Knight was also indebted to his bankers, the defendants, Fletcher and Churchman, in the sum of $10,000, which indebtedness
232 was evidenced by various promissory notes, of which a note for $4,000 matured March 6th, 1879, and other notes for $6,000 matured at different dates up to April 18th, 1879.

Afterwards, on the 1st day of March, 1879, a note due one day after date was given by Knight to Fletcher and Churchman as collateral security for the other notes. The object of giving this note was to put it in the power of Fletcher and Churchman to sue and obtain judgment at any time they desired.

Besides these Mr. Knight owed mercantile debts to manufacturers and dealers living in other cities to a considerable amount, to wit, about $12,000. He was also indebted to George P. Bissell, trustee, for borrowed money to the amount of $45,867.85, which was secured by a mortgage upon real estate and default had been made in payment of interest on this mortgage debt, but of this debt Knight was personally bound for the payment of $28,770.90 only. Mr. Knight and Churchman then supposed that Knight was personally liable for the whole debt.

Foreclosure proceedings had been commenced by Bissell in January, 1879, and Knight, about that time, had some negotiations with Bissell, the object of which was to induce him to agree to take the mortgaged property in full satisfaction of the mortgage debt, and exonerate Knight's personal estate. Bissell refused and pressed his suit with the purpose, as he informed Knight, of taking per-
233 sonal judgment against Knight, collecting what he could by levy and sale of his personal property, and enforcing his mortgage lien for the balance.

Fletcher and Churchman were apprised of Bissell's suit and of his purpose to take personal judgment against Knight and levy upon his personal property, and they were also apprised of Knight's efforts to settle with Bissell, and informed Knight that if those efforts were fruitless they, Fletcher and Churchman, would protect themselves,

and requested Knight to execute for them a cognovit upon which they could take judgment at any time they saw fit. Mrs. Knight insisted that she should be put on an equal footing with Fletcher and Churchman, and it was finally agreed that the cognovit should include her debt also, and it was so made and executed on the 17th day of March, 1879, and delivered into Churchman's custody to take judgment when he saw fit. By this arrangement it was in the power of Fletcher and Churchman and Mrs. Knight at any time to take judgment; it was left wholly to them to determine when judgment should be taken, though Knight begged them to postpone as long as they could, saying he still had hopes of settling with Bissell. Fletcher and Churchman did not agree to delay, but it was understood between them and Knight that unless it became necessary for their protection against Bissell or any other person (there being, however, no expectation of suit by any other person nor that
234 there would be any necessity for the use of the cognovit if Bissell could be persuaded to take the property covered by his mortgage in satisfaction of his demand), they would not take judgment until he, Knight, could see Bissell again, and accordingly they did wait until the first of May, 1879, before they took any steps to put their claim in judgment. Knight did not see or communicate with Bissell until April 28th, 1879, when, as Knight had expected, Bissell came out to Indianapolis. Knight then saw him and again requested Bissell to take the mortgaged property for the debt, but Bissell refused to do so, and Knight made no further effort to induce him to make that arrangement. Meanwhile, from the date of the cognovit to May 1st, a period of six weeks, Knight held himself out as a solvent merchant worthy of credit, and, with the knowledge of the other defendants, went on with his business as usual, buying and selling goods.

His standing as a business man was good, and he could buy goods on credit for any reasonable amount during that time, and did buy to replenish his stock as he had been in the habit of doing; during which time his purchases amounted to $4,113.94 and his sales amounted $5,249.64.

Knight had been dealing with complainants, Spang, Chalfant and Co., during a period of four years, and with the complainants, Pliny Jewell and Sons, for eighteen months prior to May 1st, 1879.
235 The goods for which he owed Jewell & Sons were purchased as follows:

February 19th, 1879, $379.36; April 22d, 1879, $45.57; for which February purchase, on April 14th, 1879, he gave them his acceptance, payable July 2d, 1879.

The goods for which he owed Spang, Chalfant & Co. were purchased as follows:

December 17th, 1878, $75.94; April 7th, 1879, $849.80, on 90 days' credit. No part of either debt was paid.

On or about May 1st, 1879, Mr. Churchman, of Fletcher and Churchman, heard that Bissell was pressing his suit to judgment, and he therefore requested Mr. Ayres, the attorney named in the cognovit, to proceed at once to take judgment, and judgment was

entered upon the cognovit in the superior court of Marion county May 1st, 1879, for $20,352.22, the amount due Fletcher and Churchman and Mrs. Knight.

Execution was promptly issued and came to the hands of the sheriff May 1, 1879. No levy was made, though the lien of the execution attached to the personal property of Knight when the writ came to the sheriff's hands provided that such a writ, issued upon a judgment so obtained, could create a lien.

On the 3d day of May, 1879, Knight suggested to Fletcher and Churchman and Mrs. Knight that more money could be realized
out of his stock of goods by selling them out from the store
236 in the usual way than by sale on execution. He gave it as
his opinion that the stock was worth $20,000.

Mr. Ayres, who was Mrs. Knight's counsel, was thereupon consulted about the sale of the goods to Fletcher and Churchman and Mrs. Knight and advised it. Thereupon an agreement was made between Knight and Fletcher and Churchman and Mrs. Knight that Knight should turn over the goods to them in satisfaction of their judgment against him and of his debts to them. The stock on hand was really not worth $20,000, but was $5,000 or $6,000 short of that, as shown by subsequent invoice and sales after the arrangement was made. Fletcher and Churchman and Mrs. Knight took possession of the stock of goods on the 3d day of May, 1879, and put Mr. Knight in to sell out the stock as their agent in the ordinary course of business. There was no agreement as to his salary, though he took out of the proceeds of sales ten to fifteen dollars per week for his services.

The business was carried on by Fletcher and Churchman and Mrs. Knight in this way until August 12th 1879, when Fletcher and Churchman became dissatisfied and the partnership was dissolved. The goods and proceeds of sales were divided between Fletcher and Churchman and Mrs. Knight equally, and Fletcher and Churchman's share of the goods was removed from the store.
The goods on hand amounted to $9,449.88. The money real-
237 ized from sales amounted to $5,156.52. Mrs. Knight's half
of these amounts was applied in payment of the indebtedness of Knight to her and Fletcher and Churchman's share on the indebtedness of Knight to them. But as the amount received by Fletcher and Churchman fell short of paying his debt to them in the sum of $2,805, they demanded of Knight that he should give them a new note for this sum on the ground that he had overstated the amount of goods at the time they purchased them. Knight thereupon gave them a note for this balance.

The complainants, Jewell & Sons, recovered judgment against John Knight in the superior court of Marion county on the 23d day of March, 1881, for $440.20 and costs, and complainants, Spang, Chalfant & Co., recovered judgment against Knight in the circuit court of the United States for the district of Indiana for $1,032.00 on the 3d day of May, 1881. Execution was issued on the judgment in favor of P. Jewell & Sons on the 21st day of April, 1881, and on the 22d day of April, 1881, it was returned *nulla bona*. Exe-

cution was issued on the judgment in favor of Spang, Chalfant and Co. on the 4th day of May, 1881, and returned on the same day *nulla bona*, and nothing has since been paid upon either of these judgments.

After this transfer of the goods by Knight to Fletcher and
238 Churchman and Mrs. Knight, Knight had no property subject to execution, and was insolvent. The plaintiffs sold goods to Knight as stated, believing him solvent and in ignorance of the execution of said cognovit.

That upon the hearing of the said cause before the Honorable Thomas Drummond, judge of the circuit court of the United States for the district of Indiana, and the Honorable William A. Woods, district judge of the United States for said district, sitting with said circuit judge, the above facts were found, and thereupon it became a question—

1st. Whether or not the delay from March 17th to May 1st, 1879, in taking judgment upon the warrant of attorney had the effect to render the purchase which was thereafter made by the defendants Fletcher and Churchman and Mrs. Knight of the stock of goods of said John Knight voidable by the plaintiffs?

Second. The *bona fides* of original indebtedness of Knight to Fletcher and Churchman and Mrs. Knight not being questioned, whether or not, to render said sale void as to the complainants or other creditors, it must not also appear that the same was made by said John Knight with the fraudulent intent to cheat, hinder, and delay said creditors, and that said Fletcher and Churchman and Mrs. Knight had knowledge of that fact at the time they made the purchase.

239 Third. Whether or not, if such sale is voidable by the plaintiffs, it can be avoided by them for the payment of the entire indebtedness of said John Knight to them or only for the payment of so much of said indebtedness as was contracted after the execution of said warrant of attorney.

Fourth. Whether or not under the circumstances the sale by Knight to the other defendants was fraudulent as to complainants' claims for goods sold during the time the cognovit was held—March 17th, to May 1st, 1879.

Fifth. Whether under the circumstances the sale by Knight to the other defendants was fraudulent as to complainants' claims for goods sold prior to March 17th, 1879.

Upon each and all of the above questions the opinions of said judges are and were opposed, and that the points upon which they so disagree may be ruled upon by the Supreme Court, in pursuance of the statutes in such case made and provided, the said judges have caused the above points upon which they have disagreed and are so opposed to be stated under their direction, with the facts so found upon which the disagreement occurred, and that the same be certified and be made part of the record in this cause, which is done accordingly.

THOMAS DRUMMOND.
WILLIAM A. WOODS.

And the complainants now pray an appeal to the Supreme
240 Court, which is allowed on their filing their bond in the sum of $250, with surety to be approved by the court.

And afterwards, to wit, at the May term of said court, on the 15th day of July, A. D. 1884, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Horace Speed, Esq., their solicitor, and file their appeal bond herein in the sum of two hundred and fifty dollars ($250.00), with Harry J. Milligan as surety thereon, and said bond is approved by the court.

241 United States of America to John Knight, Eliza J. Knight, Stoughton A. Fletcher, and Francis M. Churchman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2d Monday of October next, pursuant to an appeal upon a certificate of division filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein Pliny Jewell and others are complainants on appeal and you are defendants on appeal, to show cause, if any there be, why the decree rendered against the said complainant on appeal, as in the said certificate of division mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana, and *ex officio* judge of said circuit court, this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal Circuit Court of the United States, District of Indiana.]

WILLIAM A. WOODS.

242 On this — day of ——, in the year of our Lord one thousand eight hundred and —, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — day of ——, A. D. 187–.

—— ——.

The appellees, John Knight and Eliza J. Knight, accept service of the within citation this 15th day of July, 1884.

F. WINTER,
Their Att'y.

The appellee, Francis M. Churchman, acknowledges service of the within citation this 15th day of July, 1884.

McDONALD, BUTLER & MASON,
Att'ys for Churchman.

243 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of Pliny Jewell *et al. vs.* John Knight *et al.* as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said circuit court this 16th day of July, A. D. 1884.

[Seal Circuit Court of the United States. District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 48. Pliney Jewell *et al.*, appellants, *vs.* John Knight, Eliza J. Knight, Stoughton A. Fletcher, & Francis M. Churchman. Filed 27th September, 1884.

3-426

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United States Supreme Court.

PLINY JEWELL, *et al.*
vs.
JOHN KNIGHT, *et al.*

No. 48.

COMPLAINANTS' BRIEF.

BENJAMIN HARRISON,
HORACE SPEED,
Of Counsel.

Press of Wm. A. Patton, 7, 8 and 9 Blackford Block.

United States Supreme Court.

PLINY JEWELL, *et al.*

vs.

JOHN KNIGHT, *et al.*

48

COMPLAINANTS' BRIEF.

This cause comes up on a certificate of division of opinion. Transcript p. 192. The certificate states the facts, but in order to make the complainants' points clear, we restate them in a somewhat different order.

STATEMENT OF FACTS.

John Knight had for many years prior to March 17, 1879, been in business as a merchant, buying and selling goods at Indianapolis, purchasing largely from merchants in the East on credit; among others, from the complainants, Jewell and Sons and Spang, Chalfant and Company. He carried a stock worth about fifteen thousand dollars ($15,000,) which he estimated at twenty thousand dollars ($20,000.) twelve thousand dollars ($12,000,) or eighty (80) per cent of which had been purchased on credit and had not been paid for. The defendants, Fletcher and Churchman, had been his bankers for years. He was in good credit with his eastern creditors as a solvent merchant.

Although in good credit with eastern merchants, he had in fact been for some months prior to March 17, 1879, on the verge of bankruptcy, as he and his bankers, Fletcher and Churchman,

well knew. He consulted with them about his condition, made it fully known to them, and they were uneasy about it. He owed them ten thousand dollars ($10,000,) evidenced by notes; and also owed his wife ten thousand dollars ($10,000,) evidenced by a note, which was for money she had borrowed for his benefit by mortgaging her real estate.

Other than the personal property employed in his business, John Knight had no property except real estate mortgaged for its full value. The mortgagee, Bissell, in January, 1879, had begun a suit to foreclose this mortgage, and to take a personal judgment, telling Knight that he would take a personal judgment against him for the debt on which he was personally liable (twenty eight thousand dollars ($28,000,) which was much more than the value of all his personalty,) and make what he could first by execution against his personal property, and thereafter, foreclose on the real estate for the remainder. The whole mortgage on the property was about, forty-five thousand dollars ($45,000). Knight had attempted to obtain from Bissell some modification of this declared intention, but without success. These facts the bank knew, and was exceedingly uneasy about them. Accordingly, on March 1, 1879, the bank induced Knight to give it his note for the whole debt—ten thousand dollars ($10,000)—at one day, as collateral security, so that it might sue the debt at any time. Four thousand dollars ($4000) of that debt was to mature March 6th, and the remainder at short dates before April 19th, 1879.

After this threat of Bissell and after giving this note, Knight continued in business, buying and selling goods as before, without disclosing his condition to the parties of whom he purchased goods on credit; and on March 17, 1879, after some negotiations, Knight executed to the bank and to Mrs. Knight, a cognovit for the amount of both their claims, aggregating over twenty thousand dollars ($20,000)—which was more than the value of all his property by six thousand dollars ($6000,) and a little more than he estimated the value of his property then was. This cognovit was expressly given and received with the intention that these creditors might take judgment at any time and hold a

priority as to the personal property over Bissell, or any other creditor who might sue. Churchman held the cognovit and watched to see that no one got ahead of him in taking judgment. After giving this cognovit, Knight went on buying goods as theretofore, on credit, and made no effort to see Bissell or write to him, until April 28, 1879, when Bissell came to Indianapolis from Hartford, Conn. While that cognovit was being so held, Knight bought goods from Jewell and Sons, forty-five dollars and fifty seven cents ($45.57.) on credit and on April 14th, gave them his acceptance payable July 2, 1879, for goods purchased in February on credit, for three hundred and seventy-nine dollars and thirty-six cents ($379.36.) In December, he had brought of Spang, Chalfant & Co. merchandise to the amount of seventy-five dollars and ninety-four cents ($75.94) and on April 7th, while the cognovit was being held, other goods to the value of eight hundred and forty-nine dollars and eighty cents ($849.80,) all on credit. From other merchants he bought on credit several thousand dollars worth of goods during the time the cognovit was being held. During that period—six weeks—Knight went on in business as before, holding himself out as a solvent merchant worthy of credit, carrying on his business buying and selling goods as theretofore, and all with the knowledge of Fletcher & Churchman and Mrs. Knight.

On May 1st, 1879, the Bank, hearing that Bissell was about to take judgment, had the cognovit put in judgment for twenty thousand three hundred and fifty-two dollars and fifty-two cents ($20,352.52) and execution immediately issued to the Sheriff on May 1st, which was held without levy, although a lien on the property. On May 3rd, Knight sold his stock, being all his property, except the real estate mortgaged to Bissell, to Fletcher & Churchman and Mrs. Knight, in satisfaction of the judgment without invoice, upon Knight's statement that it was worth twenty thousand dollars ($20,000.) In August, the proceeds of sales and the goods remaining on hand were divided between Mrs. Knight and Fletcher & Churchman, and aggregated fourteen thousand six hundred dollars ($14,600). Fletcher & Churchman then demanded of Knight and obtained from him a note

for the remainder of their debt, amounting to twenty eight hundred and five dollars ($2805,) not paid by the goods divided and the proceeds of those sold.

DIVISION OF OPINION.

The court divided in opinion (see p. 195 of transcript) upon the points:

First, whether, under the circumstances, the delay from March 17th to May 1st in entering judgment under the warrant of attorney, made the sale by Knight to the other defendants voidable by the plaintiffs who had sold goods to Knight during that time.

Second, Whether—the original debts to Mrs. Knight and Fletcher & Churchman having been *bona fide*—it must not also appear that Knight made the sale with the fraudulent intent to cheat, hinder and delay the other creditors, and that Fletcher & Churchman and Mrs. Knight had *knowledge* of that intent when they made the purchase.

Third, Whether, if the sale is voidable by the complainants, it is voidable as to the entire debt Knight owed them or only for so much as was contracted after the cognovit was executed.

Fourth, Whether, under the circumstances, the sale by Knight to the other defendants was fraudulent as to complainants' claim for goods sold during the time the cognovit was held—March 17th to May 1st.

Fifth, Whether, under the circumstances, the sale was fraudulent as to goods sold prior to March 17, 1879.

ARGUMENT.

Upon the facts found we contend that the cognovit itself was an impending lien upon John Knight's property—the store merchandise.

Buckingham v. McLean, 13 How. 150.

And that he could not in good faith thus give a cognovit for twenty thousand dollars ($20,000,) to be entered up at any moment by a vigilant creditor, with whom he was in sympathy, for an amount equal as he knew to the value of the whole of his stock, and continue thereafter, in good faith, to buy goods on credit from men who had been theretofore selling him, without giving them full

information of the changed condition of his affairs, and the prodigious hazard they ran in selling him upon credit. And as Knight could not give the cognovit under such circumstances without bad faith on his part, neither could his creditors receive such cognovit and hold it, as was done in this case, while he bought new goods on credit, as they well knew, the amount of the cognovit being so large, his condition showing him in extreme peril and insolvent, without seeing to it that his creditors were cautioned, or that the cognovit was immediately entered of record. It will not be doubted that knight, after this extraordinary change in his business condition, was required by the ordinary rules of good faith, and by the rules of law, to abstain from obtaining further credit until that cognovit had been cleared away; unless he advised persons crediting him of the sudden change in his condition.

And it is undoubtedly true, that Knight, buying these goods in that way, after such a cognovit had been given, did (call it by whatever polite name we please,) commit a fraud upon the persons he so induced to trust him. Similarly, as Knight could not do this act in good faith, neither could the Bank receive from him this act in better faith than he could give it, and hold the fruits of it.

Purchasing the goods from John Knight, they stand in his shoes. They cannot be protected, as purchasers for value. There in no pretense or claim, or suggestion in the evidence that they did not know, and have full notice of, everything that was done by John Knight from the time the cognovit was given until the last item of goods purchased was received into the store.

The question is not as to the *bona fides* of these original debts; nor whether the sale afterwards made by Knight to the other defendants was in consciously good or bad faith; but the question is whether, under all the circumstances stated, the actions of these defendants have not been such that they are precluded in a court of equity from holding this property; and whether the cognovit being given in such manner, for the avowed purpose of hindering the creditor Bissell and any other creditor who might sue, and having been used as a lien upon the whole property against

all the creditors, the cognovit itself and the judgment and execution and sale had under it, were not such a hindering and delaying of creditors, and so unjust to merchants selling on credit, that a court of equity will set them aside as unconscionable acts and instruments which did in effect, however intended, both hinder and defraud the other creditors from whom, but for this cognovit, John Knight could not have bought goods. For it plainly appears that the bank and Knight were agreed upon a delay, that a condition precedent in the agreement to delay was that the cognovit must first be given, and that they intended, by giving the cognovit, that the bank should have a sure priority over every other creditor.

The rule of law is well setiled that a man who buys goods on credit, not intending to pay for them, commits a fraud. It is also well settled that the phrase "*intends* to pay" means that he honestly believes and expects that he will pay for them. It does not include a mere speculative possibility of payment nor speculative experiments at the risk of the persons who sell on credit.

Johnson v. Monell, 2 Keyes p. 663-4.
Hilliard v. Cagle, 46 Miss. at p. 339.
Talcott v. Henderson, 31 O. S. 162 & 301.
Davis v. Stewart, 8 Fed. Rep. 104.

And if the purchaser has been, as in this case, for a long time trading with old customers, and so establishing a proper confidence, he must, if there is a sudden, serious, unfavorable change in his affairs known only to himself, inform them of that change.

Montgomery v. Brown, 20 N. Y. 287.
Mitchell v. Worden, 20 Barb. 253.
Pike v. Wieting, 49 Barb. 315.
Stewart v. Emerson, 52 N. H. p. 316.
Chaffee v. Fort, 2 Lansing 86.
Johnson v. Monnell, 2 Keyes 655.
Kerr on Fraud & Mistake, 109.
Bank of the Republic v. Baxter, 31 Vt. 111.

The rule exactly applicable here is stated in Chaffee v. Fort, Lansing 86-7. "If he buys knowing that he cannot reasonably hope to pay for them, or knowing that he must fail *unless he gets help from a friend in a short time;* then he commits a fraud if

he buys without disclosing his real condition, whether the old seller makes inquiry or not."

This was exactly Knight's condition when he bought during the period the cognovit was being held: only worse, for Bissell was not a friend and had already refused to help him.

The same doctrine is stated in Johnson v. Monell, *supra* at p. 664, as follows:

"Good faith toward those who have dealt with the purchaser upon faith of his former good standing requires him to disclose his changed circumstances if they are such as to justify a belief that he will be obliged to stop payment."

The same rule has been repeatedly announced in other cases of which we only refer to two from English courts. In Buff v. Turner, 6 Taunton 338, the court says "extraordinary circumstances *materially affecting the risk or advisability* of making the contract, wholly and peculiarly within the knowledge of one party, must be communicated, or the contract may be avoided for fraud." And in Irving v. Motley, 7 Bing. p. 552 the court says "He who, knowing his own insolvency and the *probability* that he will be unable to pay, purchases goods for the purpose of turning them over as collateral security to a creditor, is guilty of a fraud."

And Justice Story, in Conyers v. Ellis, 2 Mason at p. 239-40, combines the two rules. "One who knowing his own insolvency and utter inability to pay, purchases goods of another who is ignorant of any change in his circumstances and sells them under the most implicit belief in the good faith and solvency of the buyer, in what respect does the transaction differ from a direct affirmation by the buyer of his own good faith and solvency. If a buyer conceals a fact that is vital to the contract knowing that the other party acts upon the presumption that no such fact exists, is it not as much a fraud as if the existence of the fact was expressly denied or the reverse of it expressly stated?

These decisions condemn John Knight as to his purchases of goods made after Bissell had brought a suit to which there was no defense, and had threatened to levy execution on all Knight's

personalty including the store and Knight had given the cognovit intended to cover all his merchandise. And the law is equally condemnatory of anyone helping him or, by delaying, giving him opportunities for so doing knowing at the time that he was using those opportunities.

Hillard v. Cagle, 46 *Miss.* 337.

The necessary effect of that delay, as these creditors knew at the time, was to aid John Knight to commit frauds on merchant creditors by buying goods from them without any reasonable expectation of paying for them—frauds which they knew at the time he was committing.

In taking the cognovit it must be presumed that they intended to use it. When they did use it, it necessarily became a lien upon the goods which they knew Knight was buying on credit and bringing into the store while they were waiting. The necessary result of what they knew Knight was doing and of what they contemplated doing was to subject merchandise procured by fraud from the complainants to the payment of their debt. They are presumed in law to have intended this necessary result.

They had taken from an insolvent merchant whose real estate was encumbered for more than it would bring a cognovit for a greater sum than the value of all his goods, intending to levy it just before judgment would be taken in a pending suit—to which there was no defense and no apparent reason why judgment might not be taken any day—and held this cognovit at Knight's request while he, with their knowledge and consent, went on in business as usual—part of which was buying goods on credit. *The cognovit was held so that he might go on in business as usual; and they intended to levy on the goods bought in this interval ahead of any other creditor.* The fraud on Knight's part is as gross as that of a similar dealer who bought goods while a suit against him was pending, to which there was no defense, and under which execution was shortly after levied on the goods bought. The court deemed it a gross fraud:

Devoe v. Brant, 53 *N. Y.* 462.

and declared that the facts disclosed—less glaring than here—

put the execution creditors upon inquiry as to the fraud of the defendants.

In Durell v. Haley 1, Paige 492, Chancellor Walworth directed criminal proceedings to be instituted where goods had been purchased under circumstances much like these.

A cognovit is in fact, if not technically, an *impending* lien, security or encumbrance.

Buckingham v. McLean 13 Howard 150; 166–7.

A cognovit, where execution and sale result, is always deemed "an indirect transfer," "a transfer and diversion of the debtor's property."

Pitts' case 8 Fed. Rep. 264.

The master found, as did Judge Gresham, that this cognovit, judgment and execution were vitiated by the delay and the intervening purchases. Transcript, p. 28, lines 35–6.

To this finding, which is a part of the record, there is no exception and it is therefore conclusive. Fraud upon the part of Knight being thus clearly established, and equally gross fraud as it seems to us upon the part of his co-defendants, or if not fraud on their part, yet certainly knowledge on their part of facts warning them fully that Knight was committing frauds, we think the first of the questions in the certificate must be answered in the affirmative.

Second, As to the second question in the certificate we say that certainly it is not necessary both that John Knight should have had a fraudulent intent, and that his co-defendants should have had *knowledge* of that fact. It would be amply sufficient if they had *notice*. The distinction between the two is clear, and has been repeatedly noticed by the courts.

The Distilled Spirits, 11 Wallace 366.

That the other defendants had *notice* is not denied in the evidence or the cert ficate. On the contrary, the certificate expressly declares that after giving the cognovit, Knight held himself out as a solvent merchant worthy of credit, and with the knowledge of the other defendants, went on with his bus ness as usual, buying goods. That, after taking a cognovit from him for so large an amount, in his then condition, as they knew it, it seems

to us is a finding of actual knowldge on their part. Certainly fuller *notice* than in Devoe v. Brandt, or Durrell v. Haley, *supra*.

Now, if the original indebtedness to the defendants was *bona fide*, yet, if it was illegally used in its subsequent forms, the whole would be invalidated. The original indebtedness is valid, for example in Devoe v. Brandt, in Durrell v. Haley, *supra*, and in Hilliard v. Cagle, 46 Miss. 309; indeed, in most of the fraudulent preference cases. Assuming then, as the master found, that the cognovit, judgment and execution were fraudulent, could John Knight, after the execution was issued, and while it remained a lien upon his merchandise, sell that merchandise to the holders of that cognovit in satisfaction of that fraudulent judgment without the sale becoming infected with the fraudulent quality of the judgment which formed its consideration?

We do not see how it is possible to hold such a sale valid. A sale under the execution by the Sheriff would have been fraudulent.

Bunn v. Ahl, 29 *Pa. St.* 387.

A sale by the parties in satisfaction of the same judgment cannot have a different effect. The rule repeatedly announced is that where the judgment, execution, or other lien is fraudulent, there must be an entire abandonment and rescission of the fraudulent intent and fraudulent acts before the parties can make a valid transfer. To make this transfer valid they must have cancelled their judgment and execution: whereas, in this case, the sale was made in pursuance and in satisfaction of them. This exact question was decided in Bunn v. Ahl, *supra*.

D'Ivernois v. Leavitt, 23 *Barb.* 631.

Mackie v. Cairns, 5 *Cowan* 571–9.

and in many other cases.

We think, therefore, that the fact that the original debts were *bona fide* did not purify the subsequent reprehensible acts nor was it necessary that the other defendants should have actual knowledge of John Knight's fraudulent intents. Notice to them was certainly sufficient even if they had been in other respects in the attitude of *bona fide* purchasers.

But beyond the question of mere fraudulent intent or construc-

tive fraud, this series of actions belongs to that class which the court will not permit, because they are injurious to the community and therefore contrary to public policy. There are plenty of ways for a creditor to obtain honest and honorable security for his debts without resorting to these insidious means which afford such unlimited opportunities for fraud and injustice. No possible good can be accomplished by sanctioning such maneuvers as are here pointed out. They are hurtful to credit. They are of benefit to no one except those who prefer, as in this case, to let an insolvent run on in business which he should close up, but take care that the risk shall all be borne by those who, unwarned, subsequently grant him credit. Is not this case on the same footing with those where persons wish to go into business, and desire at the same time to secure their property to themselves or some other person, and leave any losses that may occur, to be borne by those who trust them?

Where a man of wealth, intending to go as a partner into a business, the outcome of which was uncertain, made a voluntary conveyance of his property to his wife, intending to secure it to her against the risks of the new venture, his conveyance was set aside and Jessell, Master of the Rolls, said "His object plainly is this 'If I succeed in business I make a fortune for myself. If I fail, I leave my creditors unpaid. They will bear the loss.' And Lindley, L. J., said 'This plainly is within the principle of Mackey v. Douglass, one of the most valuable decisions that we have on the statute of Elizabeth.' "

Ex parte Russell, 19 Ch. Div. 598-9.

The same rule has been often annonnced in both countries.

Mackey v. Douglass, L. R. 14 Eq. 118.—the leading case.

Mullen v. Wilson, 44 Pa. St. 413.

Fisher v. Lewis, 69 Mo. 630.

Beekman v. Montgomery, 14 N. J. Eq. 111.

Pomeroy Eq. Jur. Sec. 973.

In many other cases securities and arrangements have been set aside because "they furnished unreasonable facilities for fraud," were "susceptible of gross abuse" or were "antagonistic to the regular and usual course of business.

"Here are *facilities for fraud contracted for* on the face of the deed, so that it must be held wanting in legal good faith."

"Such stipulations tend inevitably to give a fraudulent advantage to the debtor over his other creditors."

Tenn. Bk. v. Ebbert, 9 Heis. 153.

"Such contracts are condemned because *they are against public policy; they throw open too wide a door to possible fraud;*"

Nailor v. Young, 7 Lea. 735.

"Because of their susceptibility to abuse, by reason of the ease with which they may be employed for wrong purposes to the injury of creditors."

Joseph v. Levi, 58 Miss. 853.

"The arrangement was *antagonistic to the regular and usual course of business, tended to break down commercial confidence and credit; and to entail losses upon those who trusted their goods and property to retail merchants.*"

Hilliard v. Cagle, 46 Miss. 409.

"If tolerated it would become an inlet to fraud and lead to all imaginable abuse."

Pettibone v. Stevens, 15 Conn. p. 26.

"The *arrangement* is one which the law will not permit a debtor to make."

State v. Mueller, 10 Mo. App. 87.

"As such, a transaction might be turned to a fraudulent use, it was their duty so far as in their power to secure the public against it."

Clow v. Wood, 5 S. & R. 275.

"The policy of the law makes the acts illegal."

McKibbin v. Martin, 64 Pa. St. 352.

There is no objection urged to any of the above transfers which could not be made with even greater force in this case. This cognovit, for such an amount, given by a struggling merchant to be held by a vigilant creditor while thousands of dollars of goods were purchased from merchants who could not learn of the cognovit and who, of course, would not have sold had its existence been discovered, furnishes more "facilities for fraud," is more "susceptible to abuse," more "antagonistic to the regu

lar and usual course of business," than any instrument condemned in the cases cited. And Clow v. Wood, *supra* condemns this cognovit where it declares "As such a transaction might be turned to a fraudulent use, it was their duty, so far as in their power lay, to secure the public against it." In Douglass v. Mackey, and Hilliard v. Cagle, *supra*, and in other cases quoted in Blennerhasset v. Sherman, the court declared that an actually fraudulent intent need not exist, that the instrument was set aside because its effect was to defraud.

Third. As to the third question, we say that it has already been decided in Kehr v. Smith, 20 Wall. 36, that where a deed is set aside for fraud as to existing creditors, it is set aside as to both prior and subsequent creditors.

And conversely, the cases there cited, particularly—

Magawley's Trust, 5 De. Gex. & Smales 1,

Jenkyn v. Vaughan, 3 Drewry 424,

Hilliard v. Cagle, *supra*,—

hold that a conveyance set aside as to subsequent creditors is also set aside as to existing creditors. We think, therefore, the third question in the certificate should be answered in the affirmative.

Fourth and Fifth. We think also, that the preceding reasoning shows that the fourth and fifth questions in the certificate should be answered in the affirmative; for we do not see how a cognovit can be taken and held while an insolvent merchant makes many purchases and afterwards makes one effort to get free and when that effort fails the cognovit is entered, and a levy thereunder is made upon all his property including that he had bought on credit while the cognovit was so held, without the cognovit being subject to the same objection made to the trust deed, held for the same purpose in

Hilliard v. Cagle, *supra.*

or the mortgage held in

Gill v. Griffith, 2 Md. Ch. 270,

or the mortgage held in

Hildeburn v. Brown, 17 B. Mon. 779,

where the vice was an agreement not to record the same unless there was danger of Sherrod's failure, or the long unused deeds in

Scrivenor v. Scrivenor, 7. B. Mon. 374,

Hungerford v. Earle, 2 Vern. 261,

all of which cases are quoted from and approved in

Blennerhasset v. Sherman, 105 U. S. at p. p. 118-120.

and whose authority was only escaped at the argument by declaring that the three pages of that decision, citing these cases was mere dictum. If such cognovits may be given, we may as well repeal all recording acts, and all other acts intended to show the incumbrances upon property, and declare that there is no means by which merchants can learn whom they can safely trust. And we can be sure that the approval of conduct such as this will result in cognovits being freely asked by and freely given to special favored creditors to hold, while struggling merchants make efforts not by any means earnest or desperate to continue in business with comfortable assurance that all risks must be borne, all losses fall, on the less favored creditors, and that all purchases made meanwhile shall go to the watchful cognovit holder, who will be most friendly to the merchant.

BENJAMIN HARRISON.

HORACE SPEED.

Of Counsel.

423-426

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Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 48.

PLINY JEWELL ET AL.

vs.

JOHN KNIGHT ET AL.

Appellant's Brief upon Points Arising During the Argument.

I.

What the questions in the certificate should cover.

The certificate asks several questions, which might, perhaps, have been included in one general question, as in—

Leland *vs.* Wilkerson, 10 Peters, 293.
U. S. *vs.* Chicago, 7 Howard, p. 191.
Harris *vs.* Elliott, 10 Peters, 25.
Somerville *vs.* Hamilton, 4 Wheat., 229.

But the Court answered them. In each case the Court recognized the fact that the points decided were vital and determined the case; expressly stated the fact in the 4th Wheaton case.

II.

Where all the facts are stated, fraud becomes a question of law.

The Indiana statute is one of procedure. It is only declaratory of the common law.

Robinson *vs.* Elliott, 22 Wall., 522.

Quoting—

Jenners *vs.* Doe, 9 Ind., 461.

Insurance Co. *vs.* Wilcoxson, 21 Ind., p. 358.

Louthain *vs.* Miller, 85 Ind., 163–4.

Conner *vs.* Citizens' R'y Co., ~~15~~ 105 Ind., p. 65–6.

The cases cited by appellees were each defective in omitting a material allegation in pleading, or omitting to prove, as the verdict should, a material fact.

For instance:

Willis *vs.* Thompson, 93 Ind., 62.

The complaint showed a valuable consideration for the conveyance, but did not allege a fraudulent intent on the part of the grantor or notice to the grantee.

In Pence *vs.* Croan (51 Ind., 336) the complaint alleged a voluntary fraudulent conveyance, but it was bad under Indiana practice because it did not allege that the grantor had not other property to pay debts.

In Sedgwick *vs.* Tucker (90 Ind., 282) the defence pleaded and proved, as the jury found, a full consideration.

In Luce *vs.* Shoff (70 Ind., 152) the validity of certain judgments was disputed because of facts alleged and denied.

In Leasure *vs.* Coburn (57 Ind., 274) a valuable consideration had been paid. The question of fraudulent intent was necessarily one of fact. There was no imputed fraud.

III.

Was the holding of the cognovit, under the facts stated, fraudulent?

By the cognovit Knight, in law, procured the seizure of his property on execution.

Balfour *vs.* Wheeler, 18 Fed. Rep., 896–7.

Appellees admit in their brief, at page 13, that the purchasers by John Knight, under the principle of Devoe *vs.* Brandt (53 N. Y., 462), were fraudulent as to him.

Knight was also guilty under the rule that after giving the cognovit equalling in amount, as he knew, all his property, he should have informed his creditors, or refrained from buying more on credit.

Pike *vs.* Wieting, 49 Barb., 317.

Chaffee *vs.* Fort, 2 Lansing, 86.

Knight therefore being guilty of a fraud, upon facts which Churchman knew, how can Churchman claim to be innocent when his declared intention was to defeat by that cognovit any of those defrauded venders who might attempt to replevin the goods wrongfully got from them by Knight, or attach them for his fraudulent conduct, or attempt in any way to get legal redress for the wrong done them, and to take in that case for his own debt the very goods so purchased by Knight.

The judgment and execution, in pursuance of the plan

which made the cognovit bad, were bad also, and so was the sale in satisfaction of them.

D'Ivernois *vs.* Leavitt, 23 Barb., 63, 81.

Bunn *vs.* Ahl, 29 Pa. St., 387.

To make a valid sale to Churchman on May 3 the liens would have to be cancelled.

Bump. Fr. Conv., 3d ed., p. 483.

The execution prevented a sale to or purchase by any other person.

A sale of any of them after *issue* of the execution would not affect the lien.

Vandibur *vs.* Love, 10 Ind., 54.

Sidener *vs.* White, 46 Ind., 588.

Respectfully submitted.

HORACE SPEED,
Of Counsel.

123-426

JAMES H. MILLER, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1887.

PLINY JEWELL ET AL.,
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Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF FOR APPELLEES.

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APPELLEE'S BRIEF.

This was a creditor's bill by the appellants to subject to the payment of their claims, a stock of goods, wares and merchandise, which it was alleged had been transferred by the appellee, John Knight, the debtor, to the appellees, Fletcher & Churchman and Eliza J. Knight, under circumstances stated in the bill, which it was asserted rendered the transaction fraudulent as to the appellants.

The bill appears in the Record, at pages 1–6. An amendment was subsequently made (Record page 186). The answers, under oath, of the appellees to the bill are shown in the Record at pages 7–25; and to the amendment, at pages 184-187. The purchase of the property is admitted, but it is alleged to have been a transfer made and received in payment of *bona fide* indebtedness of the appellee, John Knight, to the appellees, Fletcher & Churchman and Eliza J. Knight, and without any fraudulent intent.

The replications to the answers appear in the Record at pages 26 and 190.

The cause was referred to the Master in Chancery (Record page 26), who reported the evidence taken, and his conclusion thereupon sustaining the validity of the sale, (Record pages 26–30). The complainants excepted to the Master's report, and the exceptions being heard before Judge Gresham were sustained, and a decree entered for the complainants (Record, pages 163–166).

The appellees, Fletcher & Churchman and Eliza J. Knight, filed their petition for a rehearing, (Record pp. 166–183).

This was granted and the cause ordered to be heard *de novo*. (Record p. 186.)

Upon such rehearing, before Judges Drummond and Woods, it was adjudged that the equity of the cause was with the defendants, and that the bill be dismissed. Record p. 191.

A certificate of division of opinion was entered of record. (Record, pp. 191–195.)

The facts of the case and the questions upon which the division arose, are thus stated in the certificate:

FACTS.

The defendant, John Knight, was a merchant engaged in the railway supply business at Indianapolis. He had been engaged in such business for several years prior to the 3d day of May, 1879. The defendants, Fletcher & Churchman, were his bankers, and the defendant, Eliza J. Knight, was his wife.

The complainants are eastern manufacturers, merchants residing at Hartford, Connecticut, and Pittsburg, and have sold goods to Knight, for which they have never been paid.

In the month of December, 1878, Knight borrowed from his wife $10,000, which she raised by mortgaging her separate real estate. He gave her a note at the time of the loan, evidencing the indebtedness. There is no evidence impeaching the *bona fides* of this transaction between Knight and his wife. The money so raised was used by Knight in his business.

Knight was also indebted to his bankers, Fletcher & Churchman, in the sum of $10,000, which indebtedness was evidenced by various promissory notes, of which a note for

$4,000 matured March 6th, 1879, and other notes for $6,000 matured at different dates up to April 18th, 1879.

Afterwards, on the 1st day of March, 1879, a note due one day after date, was given by Knight to Fletcher & Churchman as collateral security for the other notes. The object of giving this note was to put it in the power of Fletcher & Churchman to sue and obtain judgment at any time they desired.

Besides these, Mr. Knight owed mercantile debts to manufacturers and dealers, living in other cities, to a considerable amount, to-wit: about $12,000. He was also indebted to Geo. P. Bissell, trustee, for borrowed money to the amount of $45,867.85, which was secured by a mortgage upon real estate, and default had been made in payment of interest on this mortgage debt; but of this debt Knight was personally bound for the payment of $28,770 90 only. Mr. Knight and Churchman then supposed that Knight was personally liable for the whole debt.

Foreclosure proceedings had been commenced by Bissell in January, 1879, and Knight about that time had some negotiations with Bissell, the object of which was to induce him to take the mortgaged property in full satisfaction of the mortgage debt and exonerate Knight's personal estate. Bissell refused and pressed his suit with the purpose, as he informed Knight, of taking personal judgment against Knight, collecting what he could by levy and sale of his personal property, and enforcing his mortgage lien for the balance.

Fletcher & Churchman were apprised of Bissell's suit, and of his purpose to take personal judgment against Knight and levy upon his personal property; and they were also apprised of Knight's efforts to settle with Bissell, and informed Knight that if those efforts were fruitless they, Fletcher & Churchman, would protect themselves, and requested Knight to execute to them a cognovit upon which they could take judgment at any time they saw fit. Mrs. Knight insisted that she should be put on an equal footing with Fletcher & Churchman, and it was finally agreed that the cognovit should include her debt also, and it was so made and executed on the 17th day

of March, 1879, and delivered into Churchman's custody to take judgment when he saw fit. By this arrangement it was in the power of Fletcher & Churchman and Mrs. Knight at any time to take judgment; it was left wholly to them to determine when judgment should be taken, though Knight begged them to postpone as long as they could, saying he still had hopes of settling with Bissell. Fletcher & Churchman did not agree to delay, but it was understood between them and Knight that unless it became necessary for their protection against Bissell or any other person (their being, however, no expectation of suit by any other person, nor that there would be any necessity for the use of the cognovit if Bissell could be persuaded to take the property covered by his mortgage in satisfaction of his demand), they would not take judgment until he, Knight, could see Bissell again, and accordingly they did wait until the first of May, 1879, before they took any steps to put their claim in judgment. Knight did not see or communicate with Bissell until April 28th, 1879, when, as Knight had expected, Bissell came out to Indianapolis. Knight then saw him, and again requested Bissell to take the mortgaged property for the debt, but Bissell refused to do so, and Knight made no further effort to induce him to make that arrangement. Meanwhile, from the date of the cognovit to May 1st, a period of six weeks, Knight held himself out as a solvent merchant worthy of credit, and, with the knowledge of the other defendants, went on with his business as usual, buying and selling goods.

His standing as a business man was good, and he could buy goods on credit for any reasonable amount during that time, and did buy to replenish his stock as he had been in the habit of doing; during which time his purchases amounted to $4,113.94, and his sales amounted to $5,249.64.

Knight had been dealing with complainants, Spang, Chalfant & Co., during a period of four years, and with the complainants, Pliny Jewell & Sons, for eighteen months, prior to May 1st, 1879. The goods for which he owed Jewell & Sons were purchased as follows:

February 19, 1879, $379.36; April 22, 1879, $15.57; for which February purchase, on April 14, 1879, he gave them his acceptance, payable July 2, 1789.

The goods for which he owed Spang, Chalfant & Co. were purchased as follows:

December 17, 1878, $75.94; April 7, 1879, $849.80, on 90 days credit. No part of either debt was paid.

On or about May 1, 1879, Mr. Churchman, of Fletcher & Churchman, heard that Bissell was pressing his suit to judgment, and he therefore requested Mr. Ayres, the attorney named in the cognovit, to proceed at once to take judgment, and judgment was entered upon the cognovit in the Superior Court of Marion County, May 1st, 1879, for $20,352.22, the amount due Fletcher & Churchman and Mrs. Knight.

Execution was promptly issued and came to the hands of the sheriff May 1, 1879. No levy was made, though the lien of the execution attached to the personal property of Knight when the writ came to the sheriff's hands, provided that such a writ, issued upon a judgment so obtained, could create a lien.

On the 3d day of May, 1879, Knight suggested to Fletcher & Churchman and Mrs. Knight that more money could be realized out of his stock of goods by selling them out from the store in the usual way than by sale on execution. He gave it as his opinion that the stock was worth $20,000.

Mr. Ayres, who was Mrs. Knight's counsel, was thereupon consulted about the sale of the goods to Fletcher & Churchman and Mrs. Knight, and advised it. Thereupon an agreement was made between Knight and Fletcher & Churchman and Mrs. Knight that Knight should turn over the goods to them in satisfaction of their judgment against him and of his debts to them. The stock on hand was really not worth $20,000, but was $5,000 or $6,000 short of that, as shown by subsequent invoice and sales after the arrangement was made. Fletcher & Churchman and Mrs. Knight took possession of the stock of goods on the 3d day of May, 1879, and put Mr. Knight in to sell out the stock as their agent in the ordinary

course of business. There was no agreement as to his salary, though he took out of the proceeds of sales ten to fifteen dollars per week for his services.

The business was carried on by Fletcher & Churchman and Mrs. Knight in this way until August 12, 1879, when Fletcher & Churchman became dissatisfied and the partnership was dissolved. The goods and proceeds of sales were divided between Fletcher & Churchman and Mrs. Knight equally, and Fletcher & Churchman's share of the goods were removed from the store.

The goods on hand amounted to $9,449.88. The money realized from sales amounted to $5,156.52. Mrs. Knight's half of these amounts was applied in payment of the indebtedness of Knight to her, and Fletcher & Churchman's share on the indebtedness of Knight to them. But as the amount received by Fletcher & Churcman fell short of paying his debt to them in the sum of $2,805, they demanded of Knight that he should give them a new note for this sum, on the ground that he had overstated the amount of goods at the time they purchased them. Knight thereupon gave them a note for this balance.

The complainants, Jewell & Sons, recovered judgment against John Knight in the Superior Court of Marion County on the 23d day of March, 1881, for $440.20 and costs; and complainants Spang, Chalfant & Co. recovered judgment against Knight in the Circuit Court of the United States for the district of Indiana for $1,032.00 on the 3d day of May, 1881. Execution was issued on the judgment in favor of P. Jewell & Sons on the 21st day of April, 1881, and on the 22d day of April, 1881, it was returned *nulla bona*. Execution was issued on the judgment in favor of Spang, Chalfant and Co. on the 4th day of May 1881, and returned on the same day *nulla bona*, and nothing has since been paid upon either of these judgments.

After this transfer of the goods by Knight to Fletcher & Churchman and Mrs. Knight, Knight had no property subject to execution, and was insolvent. The plaintiffs sold goods to

Knight as stated, believing him solvent and in ignorance of the execution of said cognovit.

QUESTIONS.

First. Whether or not the delay from March 17th to May 1st, 1879, in taking judgment upon the warrant of attorney had the effect to render the purchase which was thereafter made by the defendants, Fletcher & Churchman and Mrs. Knight, of the stock of goods of said John Knight voidable by the plaintiffs?

Second. The *bona fides* of the original indebtedness of Knight to Fletcher & Churchman and Mrs. Knight not being questioned, whether or not, to render said sale void as to the complainants or other creditors, it must not also appear that the same was made by said John Knight with the fraudulent intent to cheat, hinder, and delay said creditors, and that said Fletcher & Churchman and Mrs. Knight had knowledge of that fact at the time they made the purchase.

Third. Whether or not, if such sale is voidable by the plaintiffs, it can be avoided by them for the payment of the entire indebtedness of said John Knight to them, or only for the payment of so much of said indebtedness as was contracted after the execution of said warrant of attorney.

Fourth. Whether or not, under the circumstances, the sale by Knight to the other defendants was fraudulent as to complainants' claims for goods sold during the time the cognovit was held—March 17th, to May 1st, 1879.

Fifth. Whether, under the circumstances, the sale by Knight to the other defendants was fraudulent as to complainants' claims for goods sold prior to March 17th, 1879.

ARGUMENT.

There being no one of the appellants whose claim amounts to $5,000.00, this court can only take cognizance of the cause by virtue of the certificate of division of opinion, and if this

is not sufficient to present a question for the determination of the cause, the appeal must be dismissed.

Gibson vs. *Shufeldt*, 122 U. S., 27.

II.

The questions which may be considered by the Court upon a certificate of division of opinion must be:

1. Questions material to, and which have actually arisen upon the facts of the case, and not mere abstract questions.

2. Questions of law only, and not questions of fact, or of mixed law and fact for the determination of which it is necessary to examine the facts of the case.

3. Questions presenting but a single point, and not, separately or altogether, involving a decision of the whole case.

State Bank vs. *St. Louis Railroad Co.*, 122 U. S., 21.
Williamsport Bank vs. *Knapp*, 119 U. S., 357.
Waterville vs. *Van Slyke*, 116 U. S., 699.
California Paving Co. vs. *Molitor*, 113 U. S., 609.
Weeth vs. *New England Mortgage Co.*, 106 U. S., 605.
Brobst vs. *Brobst*, 4 Wal., 2.
Havemeyer vs. *Iowa Co.*, 3 Wal., 294.
Dennistoun vs. *Stewart*, 18 How., 565.

The questions certified in this case are not obnoxious to the first objection, but, we think, most clearly are to the second and third.

The third, fourth and fifth questions differ from the first and second in inquiring as to the rights of appellants growing out of the purchase complained of, as to particular amounts, less than the whole, of their claims, but whether considered singly or altogether, the one question to be determined is, whether or not the purchase complained of is voidable by complainants as having been made in fraud of them as creditors of John Knight.

The Statutes of Indiana make the question of whether a transfer of property is voidable by creditors on account of fraud, in all cases a question of fact. It is provided in the

Statute of Frauds and Perjuries, after enacting that all conveyances, assignments, transfers, or charges made, or suffered, with the intent to hinder, delay, or defraud creditors, shall be void as to the person sought to be defrauded, that "the question of fraudulent intent, in all cases arising under the provisions of this act, shall be deemed a question of fact."

Revised Statutes 1881, *Section* 4924.

And the Supreme Court of the State has decided that by this the proposition is clearly enunciated "that the question of fraudulent intent shall no longer be one of legal inference or presumption, but it shall be one of fact, to be found from the facts and circumstances of the case as any other fact."

Pence vs. *Croan*, 51 Ind., 336.

And this is the settled rule as decided in many cases.

Sherman vs. *Hogland*, 54 Ind., 578.
Leasure vs. *Coburn*, 57 Ind., 274.
Parton vs. *Yates*, 41 Ind., 456.
Kane vs. *Drake*, 27 Ind., 29.
Luce vs. *Shoff*, 70 Ind., 152.
Sedgwick vs. *Tucker*, 96 Ind., 271.
Willis vs. *Thompson*, 93 Ind., 62.

Even in the case of the sale of goods in the possession or under the control of the vendor, where there is no immediate delivery and actual change of possession, there is only a *prima facie* presumption that the transaction is fraudulent, and the parties may show that it was made in good faith, and without intent to defraud.

Revised Statutes, 1881, Section 4911.

This Court has held that the question of whether a transfer of property made in Indiana was fraudulent as to creditors, was one of fact.

Medsker vs. *Bonebrake*, 108 U. S., 66.

And in cases arising in other States it has applied the same principle.

Jones vs. *Simpson*, 116 U. S., 609.

Hewitt vs. *Wilson*, 102 U. S., 22.
Magniac vs. *Thompson*, 7 Pet., 348.
Warner vs. *Norton*, 20 How., 448.

In the last case it was said: "Where possession of the goods does not accompany the deed, it is *prima facie* fraudulent, but open to the circumstances of the transaction which may prove an innocent purpose."

The question of fraud being thus one of fact, it is clear, we think, that none of the questions certified can properly be considered by the Court.

But apart from the question of fraud, or the provisions of the Statutes cited, it is obvious that none of the questions presents a point of law alone. It certainly can not be said that the mere holding of a cognovit for six weeks will have the effect to render a purchase of property by the creditor from the debtor, at the end of that time, voidable by other creditors. Must not the Court look to all the facts and circumstances attending the transaction, and determine the question as one of mixed law and fact—and so as to the other questions, they can not be answered without at least weighing and considering the facts and circumstances stated in the certificate, and this we submit, is not within the province of the Court.

Wilson vs. *Barnum*, 8 How. 257.

The questions present the whole case for decision. The appellants sue to have the sale in question declared to be fraudulent as to them, and by these questions this court is required to say whether judgment should have been rendered upon the facts certified, for or against the appellants, for that will be the direct effect of the answers that may be made. If the court had been asked to say in answer to a single question whether or not, upon the facts certified, the appellants were entitled to have the sale avoided for the payment of their debts in whole or in part, there could be no doubt that the court would decline to answer.

United States vs. *Bailey*, 9 Peters, 265.

The same end is sought to be attained here by separating the whole case into several questions. This was attempted in *White* vs. *Turk*, 12 Peters, 238, and the Court said: "The intention of Congress in passing the act under which this proceeding has taken place, was that a division of the judges of the Circuit Court, upon a single and material point, in the progress of the cause, should be certified to this Court for its opinion and not the whole cause. The certificate of the judges in this cause leaves no doubt that the whole cause was submitted to the Circuit Court by the motion to set aside the judgment on the bond. And had the Court agreed in opinion and rendered a judgment upon the points submitted, it would have been conclusive of the whole matter in controversy between the parties. This certificate brings the whole case before this Court, and if we were to decide the questions presented, it would, in effect, be the exercise of original, rather than appellate jurisdiction."

And to the same effect:

Nesmith vs. *Sheldon*, 6 How., 40.
Webster vs. *Cooper*, 10 How., 54.
Dennistoun vs. *Stewart*, 18 How., 565.

III.

The first question presents the proposition as to whether or not the mere delay on the part of appellees, Fletcher & Churchman and Eliza J. Knight, to take judgment and issue execution on the cognovit for a period of six weeks after its execution, had the effect to render fraudulent and void as to appellants, the purchase they then made outright from John Knight of the property in controversy. The appellees, Fletcher & Churchman and Eliza J. Knight, were *bona fide* creditors to large amounts of John Knight. This is conceded. It was their right to obtain payment of their debts, and to use all proper diligence to that end. The fact that Knight was insolvent and that by procuring payment or security from him, he might be rendered unable to pay his other creditors any-

thing, did not deprive them of their right to obtain a preference. Knight had equally the right to prefer them to other creditors, and in doing so to entirely strip himself of means to pay other creditors. A cognovit, until it is put in judgment, is not by the common law, or by the Statutes of Indiana, a lien either actual or impending upon any property of the debtor. Judgments create liens upon real estate, and executions upon personal property.

Revised Statutes 1881, §§ 608, 686.

The case of *Buckingham* vs. *McLean*, 13 How. 150, cited by appellants, does not decide that a cognovit is an impending lien, security or incumbrance. The case arose in Ohio, and the question was, whether a judgment actually entered by virtue of a cognovit, and execution issued thereon, constituted such a creation of a charge upon the bankrupt's estate by his own act, as would amount to an act of bankruptcy. It was expressly held that the mere giving of a cognovit by an insolvent debtor under pressure from his creditor, (and this was what was done and all that was done in the present case), was not even an act of bankruptcy, unless it was given in contemplation of bankruptcy. But even if it were an impending lien or incumbrance, there is nothing in this that makes it the duty of the creditor holding it, to at once enter judgment and seize the debtor's property under penalty of being debarred from ever after acquiring any interest in such property as against other creditors, either by means of the cognovit, or by purchase outright without reference to it. One creditor owes no duty to another to be diligent in obtaining a preference, or to inform him that he has obtained the means of procuring a preference and is about to use them, and the fact that the debtor is known to be utterly insolvent, does not impose such duty. The cases cited by appellants to show that refraining from taking action upon the cognovit was a fraud upon other creditors, are not at all in support of the proposition.

In *Blennerhasselt* vs. *Sherman*, 105 U. S., 100, the debtor had mortgaged his entire estate to a creditor who knew him to be

insolvent, and who, for the purpose of giving him a fictitious credit, actually concealed the mortgage, withheld it from record, and represented the debtor to have a large estate and unlimited credit. In *Hilliard* vs. *Cagle*, 46 Miss, 309, the deed of trust created an actual estate in the grantee, and yet it was withheld from record by agreement, for the purpose of giving the debtor credit, and he was allowed to remain in possession of the property and deal with it as his own, by means of which he obtained credit, and even then it was only as to the subsequent creditors that the instrument was held to be fraudulent.

In *Bunn* vs. *Ahl*, 29 Pa. St., 387, a judgment confessed for a debt honestly due, was held to be voidable by other creditors because it was shown that it was given and received for the purpose of forcing other creditors into a compromise of their claims. In other words, actual fraud by both parties was proven.

In *Devoe* vs. *Brandt*, 53 N. Y., 462, goods were purchased on credit by an insolvent person, against whom judgment for a large amount was about to be taken, and this fact he did not disclose to the seller, from whom he had been in the habit of buying. The goods were levied and sold under an execution issued upon this judgment and bought in by the judgment plaintiff. The seller replevied them. It was held that there was such fraud on the part of the first purchaser as gave the seller the right to reclaim his property, and that the judgment plaintiff was not a purchaser for value and had no equity, because he advanced nothing and lost nothing by his purchase. There was no question of fraud in the case so far as he was concerned. The case is authority for the point that it was fraudulent in Knight to buy goods on credit after giving the cognovit without disclosing the fact, and that such goods could have been reclaimed, even from the other appellees, if they had seized them under the cognovit; but it has no application here, because:

First—There is no effort here by one seller of goods to reclaim goods in specie, sold after the giving of the cognovit, but

the sellers sue as creditors for the price of the goods sold, and thus ratify the sales.

Second—No goods were ever taken by Fletcher & Churchman or Mrs. Knight, by virtue of the cognovit, nor is it even shown that any goods purchased after its execution, were received by them in any way. On the contrary, it is certified as a fact, that the goods they received were over $1,000.00 less in value than the goods on hand in Knight's possession when the cognovit was given; so that instead of its being true that the cognovit was held to enable Knight to continue in business, buying goods on credit to swell the property which Fletcher & Churchman and Mrs. Knight expected to seize, the facts are just the reverse.

The other cases cited by appellant upon this question have no application that we can see.

There is no showing in the facts certified, that there was any agreement to delay taking judgment on the cognovit, or that there was any wrongful intent or purpose in the delay that was had, on the part of Fletcher & Churchman, or Mrs. Knight. They delayed simply because they hoped Mr. Knight would be able to make some arrangement by which he could continue in business and pay all his debts, and this delay was but for six weeks. If they had then seized and acquired title to the property, solely by virtue of the cognovit, it would not have been fraudulent as to their creditors, but simply the obtaining of a preference.

In all the counties of Indiana, except two or three, there is but one court in which judgments by confession for more than $300.00 can be taken, and this court holds terms with intervals usually longer than six weeks, so that it is not an unusual thing to have cognovits held for considerable periods before judgments are entered. In the State of Illinois, and in other States perhaps, one of the ordinary forms of promissory notes in general use, in all branches of business, is what is known as a judgment note containing a provision that the holder may at any time go into any court of record and enter up judgment

upon the note without process. At common law it was recognized that cognovits might be held for a considerable time before they were put into judgment, for it was and still is a rule of practice, unless changed by statute, that where it was sought to enter judgment *more than a year and a day* after the execution of the cognovit, there must be proof that the debtor was still living and the debt unpaid.

Manufacturers' & Miners' Bank vs. *St. John*, 5 Hill, 497.

But in the present case nothing was acquired by the cognovit. A judgment was entered and execution issued, but it was never levied. Mr. Knight proposed to sell his stock outright to Fletcher & Churchman and Mrs. Knight in payment of their debts. They accepted the proposition, the goods were delivered and possession taken and continued, and payment was made by the satisfaction and discharge of the debts, and the property, as it afterwards turned out, was worth $5,000 or $6,000 less than the amount of the debt it paid.

Is this purchase made voidable as to other creditors of Mr. Knight by the mere fact that the cognovit had been held for six weeks. We have shown, we think, that the cognovit itself was not vitiated by this delay, but, even if it had been, the subsequent transaction, entirely disconnected, and the *bona fides* of which is not questioned, would not be affected.

The precise question, it seems to us, has been decided by this court in *Stewart* v. *Dunham*, 115 U. S., 61.

There a deed of trust was made by one Broughton to a Mr. Pintard, to secure a large indebtedness to the appellees, Broughton being insolvent. It was afterwards discovered that it was ineffective and void as to other creditors, by reason of its form and contents. Whereupon Broughton and Pintard united in an unconditional conveyance of the same property to the appellees, and Broughton at the same time executed a bill of sale outright to them and they took possession. Other creditors sued to set aside this transaction upon the ground that it was fraudulent *per se*. The Court said: "To this we can not accede. Assuming that the conveyance to Pintard in

trust, was of that character, according to the law of Mississippi, it does not follow that the subsequent sale and transfer, followed by delivery of possession, is tainted by the vice of the original transaction. The objection we are considering assumes that the whole transaction from the beginning, was free from actual and intended fraud, and was meant to be a mode of securing and paying an actual debt, in good faith, without any design injurious to any other creditors, beyond that implied in obtaining a preference, which is not forbidden by law. In this view, the admission that the conveyance to Pintard was illegal does not affect the subsequent sale, which, on the contrary, being free from objection on account of its own nature and form, served to remedy the defects in the original security. It was quite competent for the parties to rescind and cancel the first conveyance, and unite in the execution of another free from objection. This is all they did."

To the same effect are the following other authorities:

Harvey vs. *Mix*, 24 Conn., 406.
Matthews vs. *Buck*, 43 Me., 265.
Bank vs. *Haskins*, 3 Metc., 332.
Bump on Fraudulent Conveyances, 467, 483.

We submit, therefore, that the first question should be answered in the negative.

IV.

The second question to be considered at all must be regarded as a distinct point, in no way connected with the first or any other question. Appellants connect it with the first question, and, assuming that the cognovit and judgment were illegal, treat the subsequent purchase by Fletcher & Churchman and Mrs. Knight, although not made under or by virtue of the judgment, or an execution thereon, as being connected with and a mere outgrowth of the cognovit and vitiated by it. We have already attempted to show, in considering the first question, that the cognovit and judgment were not made fraudulent by the delay, or any other fact or circumstance attending

them, and even if they had been invalidated that the subsequent purchase was an independent transaction, and free from objection in itself, not to be affected by the antecedent transaction. The only objection to this transaction, considered by itself, presented by this question, is whether it must not be made to appear that it was made by John Knight with the fraudulent intent to cheat, hinder and delay his creditors, and that Fletcher & Churchman and Mrs. Knight had knowledge of that fact at the time they made the purchase.

We think we need cite no authority to the point that creditors can not complain of a transfer of property made by their insolvent debtor, in payment of *bona fide* indebtedness to other creditors, when there is no showing that the debtor had a fraudulent intent to cheat, hinder, or delay any of his other creditors. An insolvent debtor is nevertheless the owner of his property and has the right to dispose of it in payment of his debts, and equally the right to prefer one creditor to another.

To the point that even where there is a fraudulent intent on the part of the vendor, the vendee for value, (and a creditor obtaining a preference by payment or security of his debt is such,) will not be affected unless he has knowledge of such fraudulent intent, we cite the following:

Medsker vs *Bonebrake*, 108 U. S, 66.
Jones vs. *Simpson*, 116 U. S., 609.
Prewitt vs. *Wilson*, 103 U. S., 22.
Magniac vs. *Thompson*, 7 Pet., 348.
Lipperd vs. *Edwards*, 89 Ind., 165.
Bunnell vs. *Withrow*, 29 Ind., 123.

V.

The third, fourth and fifth questions are, we think, sufficiently covered by what has been said as to the first and second. No wrong was done to any creditor of John Knight, who sold goods to him on credit after the cognovit was given, by either Fletcher and Churchman or Mrs. Knight. The stand-